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TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1933

No. 57

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STATE OF MISSOURI, AT THE RELATION OF  
LLOYD GAINES, PETITIONER,

vs.

S. W. CANADA, REGISTRAR OF THE UNIVERSITY  
OF MISSOURI, AND THE CURATORS OF THE  
UNIVERSITY OF MISSOURI

---

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE  
OF MISSOURI.

---

PETITION FOR HABEAS CORPUS FILED MAY 24, 1932.

HABEAS CORPUS GRANTED OCTOBER 12, 1933.

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 57

STATE OF MISSOURI, AT THE RELATION OF  
LLOYD GAINES, PETITIONER,

vs.

S. W. CANADA, REGISTRAR OF THE UNIVERSITY  
OF MISSOURI, AND THE CURATORS OF THE  
UNIVERSITY OF MISSOURI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF MISSOURI

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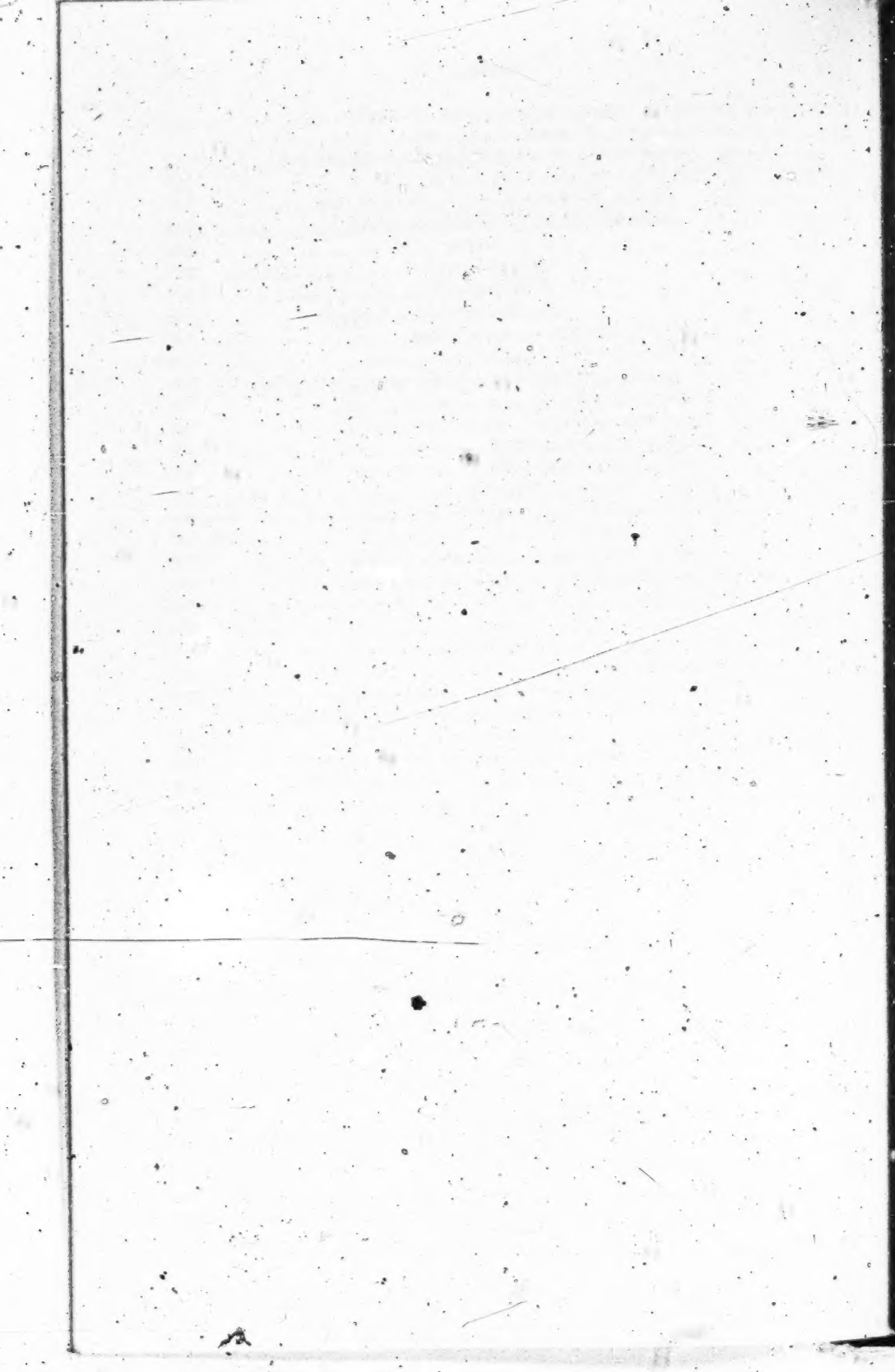
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[fol. a] UNITED STATES OF AMERICA,  
State of Missouri, ss:

Be it Remembered that, heretofore, to-wit, on the 15th day of August 1936, there was filed in the office of the clerk of the Supreme Court of the State of Missouri, in a cause entitled The State of Missouri at the relation of Lloyd L. Gaines, appellant, against S. W. Canada, Registrar of the University of Missouri, and the Curators of the University of Missouri, a body corporate, respondents, No. 35286, a certified transcript of the judgment of the Circuit Court of Boone County, and of the order of said Circuit Court allowing an appeal from said judgment to said Supreme Court of the State of Missouri, which said transcript is in words and figures following to-wit:

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI, JUNE  
TERM, 1936

Ninth day of Term

Friday, July 10th, 1936.

(34337)

THE STATE OF MISSOURI at the Relation of LLOYD L. GAINES,  
Relator,

vs.

S. W. CANADA, Registrar of the University of Missouri and  
the Curators of the University — Missouri, a Body Corporate, Respondents

Now on this 10th day of July, 1936, come all parties herein by their respective attorneys, and this cause having been specially set for this day and being now called for trial, all parties answer ready for trial, and the trial of this cause doth proceed before the Court. And the Court, after [fol. b] hearing the evidence adduced by the parties and the argument of respective counsel, doth take this cause under advisement until some day later during this term of this Court.



b

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI, JUNE  
TERM, 1936

Eleventh Day of Term

Friday, July 24th, 1936.

(34337)

THE STATE OF MISSOURI at the Relation of LLOYD L. GAINES,  
Relator,

vs.

S. W. CANADA, Registrar of the University of Missouri and  
the Curators of the University of Missouri, a Body Cor-  
porate, Respondents

JUDGMENT ENTRY

Now on this 24th day of July, 1936, at the June Term, 1936, come the parties by their attorneys of record; and the court having heretofore heard the evidence and the arguments of counsel, and the case having been tried, submitted and taken under advisement for the filing of briefs by the respective parties, and the court now being fully advised in the premises doth now find the issues herein in favor of the respondents and against the relator. Wherefore, it is by the court considered, ordered and adjudged that the relator Lloyd L. Gaines take nothing by his writ herein; that relator is not entitled to any relief prayed herein, and is not entitled to a writ of mandamus against the respondents herein; and that the alternative writ of mandamus herein be, and the same is now, hereby quashed, set aside and for naught held; and that this suit be and the same is now hereby dismissed, and that respondents go hence discharged without day and recover from relator their costs herein, and that execution issue therefor.

And now on the same day and at the same term comes relator and files his motion for a new trial herein, which motion is now by the parties presented to the court, and [fol. c] the court being fully advised doth now order that said motion for a new trial be and the same is now overruled, to which ruling and order relator excepts.

And now upon application of relator it is by the Court ordered that the relator may file his bill of exceptions within the time provided by law.

And now on the same day and at the same term comes relator and files his application and affidavit for an appeal from the judgment herein to the Supreme Court of Missouri, which application is now by the court sustained and an appeal is now by the court allowed to the relator from the judgment herein to the Supreme Court of Missouri.

The amount of the relator's appeal bond is now by the court fixed in the sum of Three Hundred Dollars (\$300.00), and relator is now by the court allowed time in vacation not exceeding ten days after the adjournment of the present term of this court in which to file same.

STATE OF MISSOURI,

County of Boone, ss:

I, Floyd Roberts, Clerk of the Circuit Court, within and for the County and state aforesaid, hereby certify that the above and foregoing is a true and perfect copy of the judgment, Order and Decree of the Boone County Circuit Court, together with the Order granting appeal, as made and entered in the case of the State of Missouri at the relation of Lloyd L. Gaines versus S. W. Canada, Registrar of the University of Missouri, and the Curators of the University of Missouri, being case numbered 34337, as fully as the same appears of record in my office.

Witness my hand as Clerk and hereto affixed the seal of said Court. Done at office in Columbia, this 8th of August, 1936.

(Signed) Floyd Roberts, Circuit Clerk. (Seal.)

[fol:d] And thereafter, and on the 19th day of April 1937, there was filed in said cause Appellant's Abstract of Record, which said abstract is in words and figures following to-wit:

23

No. 35,286

*En Banc*

IN THE

# Supreme Court of Missouri

MAY TERM, 1937

---

STATE EX REL. LLOYD L. GAINES,  
*Appellant,*

VS.

S. W. CANADA, Registrar of the University of  
Missouri, and the CURATORS OF THE  
UNIVERSITY OF MISSOURI,  
A Body Corporate,  
*Respondents.*

---

APPEAL FROM THE CIRCUIT COURT OF BOONE COUNTY,  
MISSOURI.

HONORABLE W. M. DINWIDDIE, JUDGE.

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## ABSTRACT OF THE RECORD FOR APPELLANT

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This is an action for a writ of mandamus instituted on the 15th day of April, 1936, by the appellant (relator below) against respondents (respondents below) by filing his petition in the Circuit Court of Boone County, which petition, omitting caption, is as follows:



## PETITION FOR WRIT OF MANDAMUS

(Caption omitted)

To the Honorable Walter Morris Dinwiddie, Judge  
of the Thirty-fourth Judicial Circuit:

The petition of Lloyd L. Gaines respectfully  
shows:

1. He is twenty-four years of age and of good  
moral character, a citizen of the United States  
and the State of Missouri, resident in the City of  
St. Louis, and a taxpayer. He desires to study law  
in the School of Law of the University of Mis-  
souri for the purpose of preparing himself to prac-  
tise law in Missouri and for public service in said  
State. In June, 1935, and in August, 1935, he duly  
made application for admission to the first year  
class of the School of Law of the University of  
Missouri to respondent S. W. Canada, Registrar of  
the University of Missouri, who has charge under  
regulations of the respondent, "the Curators of  
the University of Missouri," of all matters relat-  
ing to the admission of students to the first year  
class of said School of Law. He then possessed  
and still possesses all the scholastic attainments,  
mental, moral and other lawful qualifications pre-  
scribed by the Constitution and statutes of the  
State of Missouri, by "the Curators of the Uni-  
versity of Missouri" and/or by all duly authorized  
officers and agents of the same for admission into  
the first year class of the School of Law of the  
University of Missouri, and then tendered and still  
tenders himself ready and willing to pay all law-  
ful uniform fees and charges and to conform to  
all lawful uniform regulations established by law-

ful authority for admission to said class. Yet on March 27, 1935, "the Curators of the University of Missouri" arbitrarily and illegally rejected his application solely on the ground he is a Negro. The School of Law of the University of Missouri is the only law school in Missouri maintained by the State and under its control, and is the only law school in Missouri that petitioner is qualified to attend. Petitioner desires that he be admitted into the first year class of the School of Law of the University of Missouri at the next regular registration period for admission to said class, which will occur in the month of September, 1936, or at the first regular registration period after this cause has been heard and determined, upon his paying the lawful uniform fees and conforming to the lawful uniform regulations for admission to said class.

2. "The Curators of the University of Missouri" is a body corporate existing in the State of Missouri by constitutional and legislative fiat of said State; and as a body corporate owns, maintains, governs and operates the state University as a public institution. "The Curators of the University of Missouri" is an administrative agency of the State of Missouri, performing an essential governmental function, with funds derived in large part from the general treasury of the State under appropriations by the state Legislature from taxes collected from the citizens at large in the State of Missouri, including petitioner. The respondent Registrar has charge of all matters relating to admission to any division of the University, and functions as an agent of "the

Curators of the University of Missouri" under said body's supervision and control.

3. "The Curators of the University of Missouri" maintains, and by and through duly appointed agents operates the School of Law as an integral component division or department of the University, primarily for the purpose of preparing qualified residents of the State of Missouri for the profession and practice of the law for public service in said State. It officially announces the objectives of the School as follows:

"The School of Law exists to serve the State and its bar. The primary aim is to equip students for the practice of law. To this end, its methods conform to the most modern standards of legal education . . .

. . . "Also, the School recognizes a duty to the state beyond the equipment and training of practitioners. Many of the University students who do not intend to practice find its courses valuable training for citizenship, for business careers, and for the service of the public Commissions and in the Legislature. The School attempts to serve the bar of the state by the publication of the Law Series of the University of Missouri Bulletin, hereinafter described.

. . . "The purpose of this publication is to present to the Missouri Bar the results of legal study and research in the field of Missouri law carried on at the School. The Series is edited by the faculty and a board of students editors chosen by the faculty from

the members of the second and third-year classes. Student editors are chosen on the basis of legal scholarship. Election to the board is an honor and a student editor has an unusual opportunity to gain experience in legal research, which should better fit him for the practice of law.

"Each number of the Series contains at least one leading article on some phase of Missouri law written by a member of the faculty and notes on recent Missouri cases, written by student editors under the direction of a member of the faculty."

The School of Law specializes in the law and procedure which regulates the course of justice and government in Missouri, and there is no other law school within or without the State of Missouri where petitioner could study Missouri law and procedure to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Missouri. The arbitrary and illegal refusal of "the Curators of the University of Missouri" to admit him to the first year class of said School of Law solely on the ground he is a Negro, unless corrected by this Honorable Court, will inflict upon him an irreparable injury to his citizenship and place him at a distinct disadvantage in competition at the bar of Missouri and in the public service of said State with students who have had the benefit of the unique preparation in Missouri Law and procedure offered to the qualified citizens of Missouri in said School of Law.



4. "The Curators of the University of Missouri" in the School of Law of the University of Missouri offers to the qualified citizens resident of Missouri a three year course leading to the degree of Bachelor of Laws. The School of Law is on the approved list of the American Bar Association and is a member of the Association of American Law Schools, which facts give it and its graduates high standing among the legal profession. The School of Law is the only public institution in Missouri which offers a legal education to citizens or residents of Missouri.

5. The charter of "the Curators of the University of Missouri" as enacted from time to time by the legislature of the State of Missouri provides:

"All youths, resident of the State of Missouri, over the age of sixteen years, shall be admitted to all the privileges and advantages of the various classes of all the departments of the university of the State of Missouri without payment of tuition. Provided, that each applicant for admission therein shall possess such scholastic attainments and mental and moral qualifications as shall be prescribed in rules adopted and established by the board of curators; and provided further, that nothing herein enacted shall be construed to prevent the board of curators from collecting reasonable tuition fees in the professional departments, and the necessary fees for the maintenance of the laboratories in all departments of the university, and establishing such

other reasonable fees for library, hospital, incidental expenses or late registration as they may seem necessary."

6. The further requirements covering scholastic attainments and mental and moral qualifications adopted by "the Curators of the University of Missouri" pursuant to the statutory authority just cited for admission to the first year class of the School of Law of the University of Missouri are:

"The requirements for admission are the satisfactory completion of (1), a four-years' high school course, or its equivalent, and (2), the completion of one-half of the work, exclusive of correspondence work, acceptable for a Bachelors degree granted, on the basis of a four-year period of study, by the University of Missouri or any college or university accredited therewith. The Association of American Law Schools, of which this Law School is a member, interprets this requirement to mean that a candidate shall present at least 60 semester hours (or their equivalent) of college work taken in an accredited school and exclusive of credits earned in such courses as non-theory courses in Military Science Hygiene, Domestic Arts, Physical Education, Vocal or Instrumental Music.

"Admission may be by certificate from college and universities composing the Missouri College Union, or from other reputable colleges and universities. (Acceptance of such certificate lies wholly with the Committee on

Entrance of the University, and all correspondence regarding admission should be addressed to the Registrar.)

7. Petitioner is a graduate of Lincoln University in the State of Missouri, with the degree of Bachelor of Arts duly conferred upon him August 9, 1935, after he had creditably completed a four-year residence course of more than sixty hours of resident college work of a quality and quantity accepted by "the Curators of the University of Missouri" and its agents in the cases of other candidates for admission to the first year classes of the School of Law, and exclusive of credits earned in non-theory courses in military science, hygiene, domestic arts, physical education, vocal or instrumental music. Preliminary to his college work aforesaid petitioner had completed a four-year high school course.

8. Lincoln University is an accredited and reputable school and college within the meaning of the requirements of "the Curators of the University of Missouri," governing admission to the first year class of the School of Law above quoted; and is maintained by the State of Missouri and under its control. Lincoln University is a member of the North Central Association of Colleges and Secondary Schools, the standard accrediting agency for colleges in the region, which includes the State of Missouri; membership in said association by any college being a guarantee and endorsement of merit and academic standing.

9. Petitioner duly filed with and respondent

Canada duly received and accepted petitioner's record in Lincoln University in support of his application for admission to the first year class of the School of Law of the University of Missouri, and no complaint or challenge has been made by any authority or agent of the University of Missouri regarding petitioner's scholastic, mental or moral qualifications. His application was rejected, as aforesaid, solely on the ground he is a Negro.

10. Petitioner duly filed his application and supporting papers as aforesaid in ample time for the respondent, Registrar to have considered the same and admitted petitioner to the first year class of said School of Law at the last registration period for said class in September, 1935; but the respondent Registrar arbitrarily and, illegally refused to consider and act on petitioner's application until after the 1935 registration period has closed. In consequence petitioner was denied the opportunity to attend the School of Law of the University of Missouri during the academic year 1935-1936, or to appeal from an adverse decision of said Registrar in time to have had his application further considered before the close of the 1935 registration period; and has already suffered the irreparable loss of one year of his life in preparing for the practice of law and public service in Missouri.

11. The respondent Registrar refusing to act upon petitioner's application, petitioner appealed in turn to Frederick A. Middlebush and to "the Curators of the University of Missouri," but they



refused to act in the premises. On January 24, 1936, petitioner filed his petition for mandamus in this Honorable Court praying that said Registrar be compelled to perform his ministerial duty to consider and act in good faith upon petitioner's application and supporting papers. On March 27, 1936, "the Curators of the University of Missouri," rejected petitioner's application on the sole ground he is a Negro. The decision of "the Curators of the University of Missouri" is binding on the Registrar and all other officers and agencies of the University; and petitioner is without redress except at the hands of this Honorable Court.

12. Petitioner having met all lawful requirements for admission to the first year class of the School of Law of the University of Missouri, and his rejection being solely on the ground of his race or color, the respondent Registrar and "the Curators of the University of Missouri" are under a plain legal and ministerial duty to admit him to said first year class at the next regular matriculation period, which will occur in September, 1936; but unless compelled to perform said ministerial duty by writ of mandamus issued out of this Honorable Court, the respondents Registrar and "The Curators of the University of Missouri" will forever refuse to admit petitioner to said class or to permit him to study law in the School of Law of the University of Missouri.

13. The rejection of petitioner's application for admission to the first year class of the School of Law of the University of Missouri on the sole

ground he is a Negro by "the Curators of the University of Missouri" violates the Fourteenth Amendment to the Constitution of the United States in that the State of Missouri acting through its administrative officers and departments aforesaid has denied, and still denies and will continue to deny to petitioner the equal protection of the laws, and have forfeited and deprived, and will continue to forfeit and deprive him of his freedom of action and his property without due process of law; all the foregoing solely on account of the fact he is a Negro. Petitioner has no adequate or appropriate redress or remedy in the premises for the protection of his constitutional rights except the action of mandamus.

THEREFORE, petitioner Lloyd L. Gaines respectfully moves this Honorable Court for a writ of mandamus requiring S. W. Canada, Registrar of the University of Missouri, and the Curators of the University of Missouri, and each of them, to admit petitioner to the first year class of the School of Law of the University of Missouri, at the next regular admission period for said class, upon petitioner's paying the lawful uniform fees and meeting the lawful uniform requirements governing admission to said class; and further requiring of them and each of them to perform such other legal duties by way of further relief to petitioner and protection of his constitutional rights as the circumstances of the case and justice may demand.

Lloyd L. Gaines,

Petitioner.

SIDNEY B. REDMOND,  
CHARLES H. HOUSTON,  
HENRY D. ESPY,

*Attorneys for Petitioner.*

11 N. Jefferson Avenue,  
St. Louis, Missouri.

*State of Missouri, City of St. Louis, ss.*

Personally appeared before me, the undersigned notary public in and for the city and state aforesaid, the within named Lloyd L. Gaines, who being by me first duly sworn on his oath states that the matters in said petition by him subscribed which are stated as matters of facts he knows to be true, and those stated as of information and belief he verily believes to be true.

Lloyd L. Gaines.

Subscribed and sworn to before me this 15th day of April, 1936. My commission expires .....

Arnett G. Lindsay,

(Seal)

Notary Public.

Thereafter, to-wit, on the 17th day of April, 1936, Honorable W. M. Dinwiddie, presiding judge of said court, granted an alternative writ of mandamus which, omitting caption, is as follows:

**ALTERNATIVE WRIT OF MANDAMUS.**

To S. W. Canada, Registrar of the University of Missouri; and to "the Curators of the University of Missouri," a body corporate:

Whereas Lloyd L. Gaines by his petition duly verified upon his oath has represented to us that:

"1. He is twenty-four years of age and of good moral character, a citizen of the United States and the State of Missouri, resident in the City of St. Louis, and a taxpayer. He desires to study law in the School of Law of the University of Missouri for the purpose of preparing himself to practise law in Missouri and for public service in said state. In June, 1935, and in August, 1935, he duly made application for admission to the first year class of the School of Law of the University of Missouri to respondent S. W. Canada, Registrar of the University of Missouri, who has charge under regulations of the respondent, "the Curators of the University of Missouri," of all matters relating to the admission of students to the first year class of said School of Law. He then possessed and still possesses all the scholastic attainments, mental, moral and other lawful qualifications prescribed by the Constitution and statutes of the State of Missouri, by "the Curators of the University of Missouri" and/or by all duly authorized officers and agents of the same for admission into the first year class of the School of Law of the University of Missouri, and then tendered and still tenders himself ready and willing to pay all lawful uniform fees and charges and to conform to all lawful uniform regulations established by lawful authority for admission to said class. Yet on March 27, 1935, "The Curators of the University of Missouri"



arbitrarily and illegally rejected his application solely on the ground he is a Negro. The School of Law of the University of Missouri is the only law school in Missouri maintained by the State and under its control, and is the only law school in Missouri that petitioner is qualified to attend. Petitioner desires that he be admitted into the first year class of the School of Law of the University of Missouri at the next regular registration period for admission to said class, which will occur in the month of September, 1936, or at the first regular registration period after this cause has been heard and determined, upon his paying the lawful uniform fees and conforming to the lawful uniform regulations for admission to said class.

2. "The Curators of the University of Missouri" is a body corporate existing in the State of Missouri by constitutional and legislative fiat of said State; and as a body corporate owns, maintains, governs and operates the State University as a public institution. "The Curators of the University of Missouri" is an administrative agency of the State of Missouri, performing an essential governmental function, with funds derived in large part from the general treasury of the State under appropriations by the state legislature from taxes collected from the citizens at large in the State of Missouri, including petitioner. The respondent Registrar has charge of all matters relating to admission to any division of the University, and functions as an agent of "the Curators of the University of Missouri" under said body's supervision and control.



3. "The Curators of the University of Missouri" maintains, and, by and through duly appointed agents operates the School of Law as an integral component division or department of the University, primarily for the purpose of preparing qualified residents of the State of Missouri for the profession and practice of the law for public service in said State. It officially announces the objective of the School as follows:

"The School of Law exists to serve the state and its bar. The primary aim is to equip students for the practice of law. To this end, its methods conform to the most modern standards of legal education . . .

. . . "Also, the School recognizes a duty to the state beyond the equipment and training of practitioners. Many of the University students who do not intend to practice find its courses valuable training for citizenship, for business careers, and for the service of the public Commissions and in the Legislature. The School attempts to serve the bar of the state by the publication of the Law Series of the University of Missouri Bulletin, hereinafter described.

. . . "The purpose of this publication is to present to the Missouri Bar the results of legal study and research in the field of Missouri law carried on at the School. The Series is edited by the faculty and a board of students editors chosen by the faculty from the members of the second and third-year classes. Student editors are chosen on the

basis of legal scholarship. Election to the board is an honor and a student editor has an unusual opportunity to gain experience in legal research, which should better fit him for the practice of law.

"Each number of the Series contains at least one leading article on some phase of Missouri law written by a member of the faculty and notes on recent Missouri cases, written by student editors under the direction of a member of the faculty."

5 The School of Law specializes in the law and procedure which regulates the course of justice and government in Missouri, and there in no other law school within or without the State of Missouri where petitioner could study Missouri law and procedure to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Missouri. The arbitrary and illegal refusal of "the Curators of the University of Missouri" to admit him to the first year class of said School of Law solely on the ground he is a Negro, unless corrected by this Honorable Court, will inflict upon him an irreparable injury to his citizenship and place him at a distinct disadvantage in competition at the bar of Missouri and in the public service of said State with students who have had the benefit of the unique preparation in Missouri Law and procedure offered to the qualified citizens of Missouri in said School of Law.

4. "The Curators of the University of Missouri" in the School of Law of the University of

Missouri offers to the qualified citizens resident of Missouri a three year course leading to the degree of Bachelor of Laws. The School of Law is on the approved list of the American Bar Association and is a member of the Association of American Law Schools, which facts give it and its graduates high standing among the legal profession. The School of Law is the only public institution in Missouri which offers a legal education to citizens or residents of Missouri.

5. The charter of "the Curators of the University of Missouri" as enacted from time to time by the legislature of the State of Missouri provides:

"All youths, resident of the State of Missouri, over the age of sixteen years, shall be admitted to all the privileges and advantages of the various classes of all the departments of the university of the State of Missouri without payment of tuition: Provided, that each applicant for admission therein shall possess such scholastic attainments and mental and moral qualifications as shall be prescribed in rules adopted and established by the board of curators; and provided further, that nothing herein enacted shall be construed to prevent the board of curators from collecting reasonable tuition fees in the professional departments, and the necessary fees for the maintenance of the laboratories in all departments of the university, and establishing such other reasonable fees for library, hospital, incidental expenses or late

registration as they may seem necessary."

6. The further requirements covering scholastic attainments and mental and moral qualifications adopted by "the Curators of the University of Missouri" pursuant to the statutory authority just cited for admission to the first year class of the School of Law of the University of Missouri are:

"The requirements for admission are the satisfactory completion of (1), a four-years' high school course, or its equivalent, and (2), the completion of one-half of the work, exclusive of correspondence work, acceptable for a Bachelors degree granted, on the basis of a four-year period of study, by the University of Missouri or any college or university accredited therewith. The Association of American Law Schools, of which this Law School is a member, interprets this requirement to mean that a candidate shall present at least 60 semester hours (or their equivalent) of college work taken in an accredited school and exclusive of credits earned in such courses as non-theory courses in Military Science, Hygiene, Domestic Arts, Physical Education, Vocal or Instrumental Music.

"Admission may be by certificate from college and universities composing the Missouri College Union, or from other reputable colleges and universities. (Acceptance of such certificate lies wholly with the Committee on Entrance of the University, and all correspondence regarding admission should be addressed to the Registrar.)



7. Petitioner is a graduate of Lincoln University in the State of Missouri, with the degree of Bachelor of Arts duly conferred upon him August 9, 1935, after he had creditably completed a four-year residence course of more than sixty hours of resident college work of a quality and quantity accepted by "the Curators of the University of Missouri" and its agents in the cases of other candidates for admission to the first year classes of the School of Law, and exclusive of credits earned in non-theory courses in military science, hygiene, domestic arts, physical education, vocal or instrumental music. Preliminary to his college work aforesaid petitioner had completed a four-year high school course.

8. Lincoln University is an accredited and reputable school and college within the meaning of the requirements of "the Curators of the University of Missouri" governing admission to the first year class of the School of Law above quoted; and is maintained by the State of Missouri and under its control. Lincoln University is a member of the North Central Association of Colleges and Secondary Schools, the standard accrediting agency for colleges in the region which includes the State of Missouri; membership in said association by any college being a guarantee and endorsement of merit and academic standing.

9. Petitioner duly filed with and respondent Canada duly received and accepted petitioner's record in Lincoln University in support of his application for admission to the first year class of the School of Law of the University of Mis-



souri, and no complaint or challenge has been made by any authority or agent of the University of Missouri regarding petitioner's scholastic, mental or moral qualifications. His application was rejected, as aforesaid, solely on the ground he is a Negro.

10. Petitioner duly filed his application and supporting papers as aforesaid in ample time for the respondent Registrar to have considered the same and admitted petitioner to the first year class of said School of Law at the last registration period for said class in September, 1935; but the respondent Registrar arbitrarily and illegally refused to consider and act on petitioner's application until after the 1935 registration period has closed. In consequence petitioner was denied the opportunity to attend the School of Law of the University of Missouri during the academic year 1935-1936, or to appeal from an adverse decision of said Registrar in time to have had his application further considered before the close of the 1935 registration period; and has already suffered the irreparable loss of one year of his life in preparing for the practice of law and public service in Missouri.

11. The respondent Registrar refusing to act upon petitioner's application, petitioner appealed in turn to Frederick A. Middlebush and to "the Curators of the University of Missouri," but they refused to act in the premises. On January 24, 1936, petitioner filed his petition for mandamus in this Honorable Court praying that said Registrar be compelled to perform his ministerial duty

to consider and act in good faith upon petitioner's application and supporting papers. On March 27, 1936, "the Curators of the University of Missouri," rejected petitioner's application on the sole ground is a Negro. The decision of "the Curators of the University of Missouri" is binding on the Registrar and all other officers and agencies of the University; and petitioner is without redress except at the hands of this Honorable Court.

12. Petitioner having met all lawful requirements for admission to the first year class of the School of Law of the University of Missouri, and his rejection being solely on the ground of his race or color, the respondent Registrar and "the Curators of the University of Missouri" are under a plain legal and ministerial duty to admit him to said first year class at the next regular matriculation period, which will occur in September, 1936; but unless compelled to perform said ministerial duty by writ of mandamus issued out of this Honorable Court, the respondents Registrar and "The Curators of the University of Missouri" will forever refuse to admit petitioner to said class or to permit him to study law in the School of Law of the University of Missouri.

13. The rejection of petitioner's application for admission to the first year class of the School of Law of the University of Missouri on the sole ground he is a Negro by "the Curators of the University of Missouri" violates the Fourteenth Amendment to the Constitution of the United States in that the State of Missouri acting

through its administrative officers and department aforesaid has denied, and still denies and will continue to deny to petitioner the equal protection of the laws, and have forfeited and deprived, and will continue to forfeit and deprive him of his freedom of action and his property without due process of law; all the foregoing solely on account of the fact he is a Negro. Petitioner has no adequate or appropriate redress or remedy in the premises for the protection of his constitutional rights except the action of mandamus.

NOW THEREFORE, we being willing that full and speedy justice should be done in this behalf to him, the said Lloyd L. Gaines, do command and enjoin you that immediately after the receipt of this writ you, and each of you, admit petitioner Lloyd L. Gaines, to the first year class of the School of Law of the University of Missouri, at the next regular admission period for said class, upon petitioner's paying the lawful uniform fees and meeting the lawful uniform requirements governing admission to said class; or that you appear before the Circuit Court of Boone County, at the City of Columbia, on the 27th day of April, 1936, at 9 o'clock, to show cause for your refusal so to do. Herein fail not at your peril, and have then and there this writ.

Witness W. M. Dinwiddie, Judge of the Circuit Court of Boone County, Missouri, and the seal of said Court hereto affixed, this 17th day of April, 1936.

Floyd Roberts,

(Seal) Clerk, Circuit Court of Boone County.

Thereafter in due time, during the April Term, 1936, of said court respondents filed their return to the aforesaid alternative writ in said cause, which return, omitting caption, is as follows:

**RESPONDENTS' RETURN TO THE ALTERNATIVE WRIT OF MANDAMUS.**

Now come the respondents S. W. Canada, Registrar of the University of Missouri, and the Curators of the University of Missouri, a body corporate (referred to in the alternative writ as "defendants"), and for their answer and return to the alternative writ of mandamus issued herein, respondents state:

**I.**

1. The alternative writ of mandamus herein should be quashed for the reason that relator's petition and said alternative writ each fails to state facts sufficient to constitute a cause of action against respondents, or to entitle relator to any of the relief which he prays, or to any of the relief demanded by said alternative writ of mandamus.

2. Respondents deny that they have any knowledge or information thereof sufficient to form a belief as to the truth of the allegation that relator Gaines (designated in the alternative writ as "plaintiff" and as "petitioner") is a taxpayer; and respondents therefore deny that relator Gaines is a taxpayer. Respondents deny



that in June, 1935, or in August, 1935, relator possessed or still possesses all the lawful qualifications, other than mental and moral qualifications, prescribed by the Constitution and statutes of the State of Missouri, by the Curators of the University of Missouri and/or by all duly authorized officers and agents of the same, for admission into the first year class of the School of Law of the University of Missouri. Respondents deny that relator then tendered or still tenders himself ready and willing to conform to all lawful uniform regulations established by lawful authority for admission to said class. Respondents deny that on March 27, 1936, the Curators of the University of Missouri arbitrarily or illegally rejected relator's application; and respondents state that the actual grounds for the rejection of relator's application by the Curators of the University of Missouri were stated in a resolution adopted by the Curators of the University of Missouri on March 27, 1936, which resolution was as follows:

"WHEREAS, Lloyd L. Gaines, colored, has applied for admission to the School of Law of the University of Missouri, and

WHEREAS, the people of Missouri, both in the Constitution and in the Statutes of the State, have provided for the separate education of white students and negro students, and have thereby in effect forbidden the attendance of a white student at Lincoln University, or a colored student at the University of Missouri, and



WHEREAS, the Legislature of the State of Missouri, in response to the demands of the citizens of Missouri has established at Jefferson City, Missouri, for negroes, a modern and efficient school known as Lincoln University, and has invested the Board of Curators of that institution with full power and authority to establish such departments as may be necessary to offer to students of that institution opportunities equal to those offered at the University, and have further provided, pending the full development of Lincoln University, for the payment, out of the public treasury, of the tuition, at universities in adjacent states, of colored students desiring to take any course of study not being taught at Lincoln University, and

WHEREAS, it is the opinion of the Board of Curators that any change in the State system of separate instruction which has been heretofore established, would react to the detriment of both Lincoln University and the University of Missouri,

THEREFORE, BE IT RESOLVED, that the application of said LLOYD L. GAINES be and it hereby is rejected and denied, and that the Registrar and the Committee on Entrance be instructed accordingly."

Respondents deny that relator Gaines is qualified or entitled to attend the School of Law

of the University of Missouri. Respondents deny that at the next regular registration period for admission to the first year class of the said School of Law, in September, 1936, or at the first regular registration period after this cause has been heard and determined, relator can possibly conform to the lawful uniform regulations or requirements for admission to said class.

3. Respondents deny any knowledge or information thereof sufficient to form a belief as to the allegation that the funds used by the Curators of the University of Missouri in operating the State University are derived in part from taxes (if any) collected from relator; and respondents therefore deny the allegation that the funds used by the Curators of the University of Missouri in operating the State University are derived in part from taxes collected from relator.

4. Respondents deny that the maintenance and operation by the respondent Curators of the School of Law of the University of Missouri is primarily for the purpose of preparing qualified residents of the State of Missouri for the profession and practice of the law and for public service in said State of Missouri; and respondents state that that is but one of the purposes, and not the primary purpose, in the maintenance and operation of said School of Law. Respondents deny that said School of Law specializes in the law and procedure which regulates the course of justice and government in Missouri; and respondents deny that there is no other law school

within or without the State of Missouri where relator could study Missouri law and procedure to the same extent or on an equal level of scholarship and intensity as in the School of Law of the University of Missouri. Respondents deny that the refusal of the Curators of the University of Missouri to admit relator to the first year class of said School of Law was solely on the ground that he is a negro, and deny that said refusal was or is arbitrary or illegal. Respondents deny that said refusal will inflict upon relator an irreparable injury to his citizenship, or will place him at a distinct disadvantage in competition at the bar of Missouri or in the public service of said state, with students who have had the benefit of the preparation in Missouri law and procedure offered to qualified citizens of Missouri in said School of Law. Respondents deny that the preparation in Missouri law and procedure offered to the qualified citizens of Missouri in said School of Law is unique.

5. Respondents deny that the statutory enactment quoted in paragraph 5 of the alternative writ is any provision or part of any "charter" of the Curators of the University of Missouri. Respondents state that said statutory enactment (Sec. 9657, R. S. Mo. 1929) specifying the youths legally entitled to admission as students in the University of Missouri, is in *pari materia* and must be construed and applied in connection with the provisions of the Constitution of Missouri, other statutory provisions of the State of Missouri, and the public policy of the State of Mis-

souri hereinafter set forth; and when so construed and applied, the respondents are thereby legally forbidden to admit the relator, who is a negro, as a student in the University of Missouri or in the School of Law therein, or in any department thereof.

6. Respondents deny that Lincoln University is an accredited school and college within the meaning of the requirements of the Curators of the University of Missouri quoted in paragraph 6 of the alternative writ, governing admission to the first year class of the School of Law of the University of Missouri.

7. Respondents admit that relator duly filed with respondent Canada, and that said respondent duly received, relator's record in Lincoln University; but respondents deny that respondent Canada duly accepted relator's record in Lincoln University in support of his application for admission to the first year class of the School of Law of the University of Missouri. Respondents deny that relator's application was rejected solely on the ground that he is a negro; and respondents state that relator's application was rejected on all of the grounds expressly recited and stated in the resolution of the Board of Curators of the University of Missouri, which is set forth in paragraph 2 of this answer and return.

8. Respondents deny that relator duly filed his application and supporting papers as aforesaid in ample time for the respondent Registrar to have considered the same and admitted relator to the first year class of said School of Law at



the last registration period of said class in September, 1935; and respondents deny that any of the respondents had the legal authority to admit relator to said class regardless of when his application was filed. Respondents deny that the respondent Registrar arbitrarily and illegally refused to consider and act on relator's application until after the 1935 registration period had closed. Respondents deny that in consequence of any "arbitrary or illegal refusal by respondent Registrar" (respondents expressly denying that there was any such arbitrary or illegal refusal) to consider and act on relator's application until after the 1935 registration period had closed, relator was denied the opportunity to attend the School of Law of the University of Missouri during the academic year 1935-1936, or to appeal from an adverse decision of said Registrar in time to have had his application further considered before the close of the 1935 registration period, or that relator has already suffered the irreparable loss of one year of his life in preparing for the practice of law and public service in Missouri.

9. Respondents deny that respondent Registrar refused to act upon relator's application, and that relator appealed in turn to Frederick A. Middlebush and to the Curators of the University of Missouri, and deny that they refused to act in the premises. Respondents deny that on March 27, 1936, the Curators of the University of Missouri rejected relator's application on the sole ground he is a negro. Respondents deny that relator without redress except at the hands of this Honorable Court.



10. Respondents deny that relator has met all lawful requirements for admission to the first year class of the School of Law of the University of Missouri; and deny that his rejection is based solely on the ground of his race or color; and deny that respondent Registrar and the Curators of the University of Missouri are under a plain legal and ministerial duty to admit relator to said first year class at the next regular matriculation period, which will occur in September, 1936.

11. Respondents deny that the rejection of relator's application for admission to the first year class of the School of Law of the University of Missouri was on the sole ground that he is a negro; and respondents deny that said rejection violated the Fourteenth Amendment to the Constitution of the United States; and deny that the State of Missouri acting through its administrative officers and department aforesaid has denied or still denies or will continue to deny to relator the equal protection of the laws, or have forfeited and deprived or will continue to forfeit and deprive him of his freedom of action or his property without due process of law; and deny that relator has been or is being or will be denied the equal protection of the laws, or that he has been, is being or will be deprived of his freedom of action or property without due process of law. Respondents deny that relator has been, is being or will be denied any of his lawful rights, or of the equal protection of the laws, or of freedom of action or property, solely on account of the fact that he is a negro. Respondents deny that relator has no

adequate or appropriate redress or remedy in the premises for the protection of his constitutional rights except the action of mandamus.

## II.

It is contrary to the Constitution, laws and public policy of the State of Missouri for respondents to admit relator, who is a negro, as a student in the University of Missouri or in any school or department thereof. The Constitution, laws and public policy of the State of Missouri forbid the respondents to admit any negro as a student in the University of Missouri or in any school or department thereof. If the respondents should obey the command of the alternative writ of mandamus herein, and should admit relator to the first year class, of the School of Law of the University of Missouri, the respondents would be acting in violation of their legal duty, and in violation of the Constitution, laws and public policy of the State of Missouri, which require a separation of the white and negro races for the purpose of education, and require that members of the white race and members of the negro race shall be educated in separate public schools and universities, and forbid a white student to attend a negro school or university and forbid a negro student to attend a white school or university of the State of Missouri. The provisions of the Constitution and laws of Missouri which so ordain, and which establish the aforesaid public policy of the state, are as follows:

Sec. 3 of Article XI of the Constitution of

Missouri provides: "Separate free public schools shall be established for the education of children of African descent."

Sec. 5 of Article XI of the Constitution of Missouri provides: "The General Assembly shall, whenever the public school fund will permit and the actual necessity of the same may require, aid and maintain the State University, now established, with its present departments. The government of the State University shall be vested in a Board of Curators, to consist of nine members, to be appointed by the Governor, by and with the advice and consent of the Senate." When this constitutional provision was adopted by the people of the State of Missouri the State University mentioned therein, being the University of Missouri, had long been established and was then being operated as a university for white students only; and negro students had never up to that time and have never at any time been admitted as students therein. By the adoption of this constitutional provision for the maintenance of the University of Missouri as then established, the Constitution in legal effect required the continued maintenance and operation of said University as one for white students exclusively, and forbade the respondents to admit a negro as a student therein.

By Sec. 9216, R. S. Mo. 1929, it is provided that "separate free schools shall be established for the education of children of African descent; and it shall thereafter be unlawful for any colored child to attend any white school, or for any white child to attend a colored school." Under Secs. 9217,

9346, 9347, 9348 and 9349 there have been and are established throughout the State of Missouri free public schools for negroes, and relator has received free education in such schools so established.

By Article 19 of Chapter 57 (Secs. 9616 to 9624, R. S. Mo. 1929, inclusive) the State of Missouri has established in Cole County, Missouri, Lincoln University, a university for the education of negro students of the state; and the State of Missouri each year has expended and continues to expend several hundred thousand dollars per year in maintaining and operating Lincoln University. By said article the control of Lincoln University is vested in a Board of Curators composed of the Superintendent of Instruction ex-officio and six members, at least three of whom are negroes. By said article the Board of Curators of Lincoln University are authorized and required to reorganize said institution so that it shall afford to the negro people of the state opportunity for training up to the standard furnished at the University of Missouri whenever necessary or practicable in their opinion; and to this end said Board of Curators are authorized to purchase necessary additional land, to erect necessary additional buildings, to provide necessary additional equipment, and to locate, in the County of Cole, the respective units of the University where, in their opinion, the various schools will most effectively promote the purposes of said article. By said article it is further provided that the Board of Curators of Lincoln University shall organize after the manner of the



Board of Curators of the University of Missouri, with like powers, authority, responsibilities, privileges, immunities, liabilities and compensation. By said article it is further provided as follows:

"Pending the full development of the Lincoln University, the board of curators shall have the authority to arrange for the attendance of negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subject provided for at the state university of Missouri, and which are not taught at the Lincoln University and to pay the reasonable tuition fees for such attendance; provided that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department."

The duties thus imposed upon the Board of Curators of Lincoln University are mandatory in their nature, and the effect of said Article 19 creating Lincoln University and the appropriation acts herein mentioned is to afford to the negroes of the State of Missouri, including relator, equal protection of the laws and equal opportunity with that accorded to white citizens, for education, culture and training afforded by the University of Missouri to students in its various departments, including the School of Law, and accords to every negro citizen in the State of Missouri, including this relator, due process of law with respect to his rights and liberties concerning the acquisition of an education, including an education in the law.

Relator has availed himself of said equal opportunity for education accorded by the State to negroes, and has received the benefits and advantages of education in Lincoln University; and in August, 1935, relator became a graduate of Lincoln University with the degree of Bachelor of Arts. Although relator has thus availed himself of the education in arts and sciences afforded by Lincoln University, he now refuses (as hereinafter shown) to avail himself of the opportunity afforded to him, through the establishment of Lincoln University, to receive education in the law, and seeks by this proceeding to compel respondents to admit him into the School of Law of the University of Missouri in violation of the Constitution, laws and public policy of the State of Missouri as herein shown.

Lincoln University was established by the Legislature of the State of Missouri in 1921, at which time the name of Lincoln Institute, a school theretofore maintained for the education of negroes, was changed to Lincoln University. By acts of appropriation by the Legislature of the State of Missouri at the biennial sessions from the year 1921 to the year 1935 inclusive there has been appropriated and made available for the support, maintenance and operation of Lincoln University the total sum of \$3,477,153.49. By acts of the Legislature of the State of Missouri at the biennial sessions from the year 1929 to the year 1935 inclusive there has been separately appropriated and made available the additional total sum of \$55,615.91 to be used in paying the tuition of negroes

at standard colleges or universities not located in Missouri, in those cases where negro students are pursuing courses of study not offered at Lincoln University but which are offered at the University of Missouri.

By Sec. 9639, R. S. Mo: 1929, it is provided that the Curators of the University of Missouri shall severally take, and the respondent Curators have severally taken, an oath to support the Constitution of Missouri and to faithfully demean themselves in office; and it is thereby made the sworn duty of said Curators to comply with all of the aforesaid provisions of the Constitution and statutes, and with the public policy of the state aforesaid, requiring a separation of the white and negro races for the purpose of education.

The foregoing provisions of the Constitution and Statutes of the State of Missouri have established as the law and public policy of the State of Missouri, binding upon the respondents, that a negro shall not be admitted as a student in the University of Missouri or in any school or department thereof. In refusing to admit the relator, a negro, as a student in the School of Law of the University of Missouri the respondents have therefore acted and are acting lawfully, in conformity with their sworn constitutional and legal duty, in compliance with the Constitution, laws and public policy of the State of Missouri as aforesaid, and not otherwise.

### III.

If relator desires to become a student in a

school of law and to receive a legal education as he alleges, then by the Constitution, laws and public policy of the State of Missouri relator is fully accorded the opportunity to do so; and the opportunity so accorded to him is equal to the opportunity which the state accords to white students to receive education in the School of Law of the University of Missouri.

Relator is by Sec. 9618, R. S. Mo. 1929, accorded the opportunity to apply to the Board of Curators of Lincoln University for education in a school of law up to the standard of legal education furnished by the School of Law in the University of Missouri, either by said Board establishing such a school of law as a part of Lincoln University, or, pending that, by said Board arranging for the attendance of relator at the University of some adjacent state (Kansas, Nebraska, Iowa or Illinois) and to take the law course and to study the subjects provided for in the School of Law of the University of Missouri, and by said Board paying the reasonable tuition fees for such attendance by relator. The Legislature of Missouri has appropriated, and there is now and has been at all times available, more than a sufficient sum of money to enable the Board of Curators of Lincoln University to arrange for the attendance of relator at the University of any one of said four adjacent states to take the law course and study the subjects provided for in the School of Law of the University of Missouri, and to pay the reasonable tuition fees for such attendance. In the state university of each of the four states men-



tioned there is a School of Law which offers to students therein a course of education in the law which fully measures up to the standard of education offered to students in the School of Law of the University of Missouri. In the school of law in the university of each of said four states the relator could study Missouri law and procedure to the same extent and on an equal level of scholarship and intensity as in the School of Law of the University of Missouri. Negro students are admitted into the school of law in the state university of each of said four adjacent states. By the entrance requirements for admission to the first year class of the school of law of the state university of each of said four states, the relator is qualified and is otherwise eligible for admission (and if he applied he would be admitted) as a student in the first year class in the school of law of the state university of any one of said four adjacent states.

By the laws of Missouri there is therefore provided for relator an opportunity equal to that provided by the state for white citizens in Missouri, to receive an education in the law. Although prior to the institution of this suit respondents gave to relator actual notice of these statutory provisions for his benefit, relator has chosen not to avail himself thereof, and he has failed and refused to avail himself thereof, or to make any effort to avail himself thereof; and instead relator seeks by the extraordinary remedy of mandamus to compel respondents to admit him as a student in the University of Missouri, in

violation of the Constitution, laws and public policy of the State of Missouri as aforesaid. For each and all of the reasons aforesaid the relator has a full, complete and adequate remedy otherwise than by the extraordinary remedy of mandamus; and relator has no right to the remedy of mandamus or to any of the relief prayed for herein.

WHEREFORE, respondents pray that the alternative writ of mandamus herein be quashed, that relator be denied all of the relief prayed and be adjudged and decreed to have no right to any of the relief prayed, and that this suit be dismissed, and that respondents be adjudged to go hence discharged without day, and to recover their costs herein.

FRED L. WILLIAMS,

NICK T. CAVE,

WILLIAM S. HOGSETT,

*Attorneys for Respondents.*

Thereafter in due time, during the April Term, 1936, of said court, appellant filed his reply to said return, which reply, omitting caption, is as follows:

#### RELATOR'S REPLY TO RESPONDENTS' RETURN.

Now comes Lloyd L. Gaines, relator, and first saving all objections and exceptions which may be his by reason of the many imperfections and defects in respondents' return to the alternative writ of mandamus issued in this cause, for reply to said return says:

## I.

1. He denies that his petition and said alternative writ failed to state facts sufficient to constitute a cause of action against respondents or to entitle him to all of the relief for which he prays.

2. Relator denies that so far as respects admission to said School of Law of the University of Missouri, Section 9657 R. S. Mo. 1892, can be construed with any provisions of the Constitution of Missouri or statutes of Missouri regarding education, and denies that any question of public policy is affected. He denies that any construction of Section 9657 forbids respondents to admit relator to the School of Law of the University of Missouri, and says that when said Section 9657 is read in the light of the Constitution of the United States, especially the Fourteenth Amendment thereto, respondents are under a plain, legal, ministerial duty to admit relator to the School of Law of the University of Missouri, at the next regular admission period for the first year class of said School, upon relator's paying the lawful uniform fees and meeting the lawful uniform requirements governing admission to said class.

3. Relator denies that his application was rejected on any ground other than the one that he is a Negro.

## II.

4. By way of further reply to Part II of respondents' return relator denies that it is con-

trary to the constitution, law or public policy of Missouri for respondents to admit him as a student in the School of Law of the University of Missouri. He denies that if respondents should obey the command of the alternative writ and admit him to the first year class of the School of Law they would be acting in violation of their legal duty or in violation of the constitution, laws or public policy of Missouri. He denies that the constitution, laws or public policy of Missouri forbid a white student to attend a Negro university or college or a Negro student to attend a white university in Missouri. On the other hand he states that under the Constitution of Missouri, the laws and public policy of the State, when construed and reconciled with the requirements of the Constitution of the United States, especially the Fourteenth Amendment thereto, respondents have arbitrarily and illegally rejected his application for admission to the first year class of the School of Law of the University of Missouri solely on account of the fact he is a Negro, and are under a plain legal, ministerial duty to admit him upon the same terms and conditions imposed upon qualified students who are not Negroes and apply for admission to the first year class of the School of Law.

5. Relator admits that Sections 3 and 5 of Article XI of the Constitution of Missouri are as quoted in the return, but says that Section 3 has no bearing on the issues raised in the principal case. As to Section 5, relator says that the Constitution of Missouri of which said Section is part, was adopted in 1875, after the passage and adop-



tion of the Fourteenth Amendment to the Constitution of the United States; that he is not familiar with the history of the University of Missouri before Section 5 was adopted, and does not have any knowledge or information thereon sufficient to enable him to form a belief as to whether Section 5 attempted to establish or perpetuate the University of Missouri as a white institution, from which qualified Negroes were to be excluded solely on account of race or color, and demands strict proof of the allegation. Regardless of the intent of the framers of the Missouri Constitution as to Section 5, relator says that construed and reconciled with the Constitution of the United States, especially the Fourteenth Amendment thereto, Section 5 could not establish or perpetuate the University of Missouri as a white institution from which qualified Negroes should be excluded solely on account of race in the absence of an equal university and educational opportunity being offered to said qualified Negroes within the State of Missouri.

6. Relator admits that Section 9216, R. S. Mo. 1929, is as quoted by respondents; so also under Section 9217, 9346, 9347, 9348 and 9349, free public schools for Negroes have been established throughout Missouri as alleged by respondents. But relator says that the above sections have nothing to do with the issues in this case whether he, being otherwise qualified, shall be denied admission to the School of Law of the University of Missouri solely on account of his race. If the same be material he says that the free public schools established for Negroes throughout the State by and

large are inferior and do not offer equal educational opportunities as the white free public schools.

7. Relator admits that the State has established Lincoln University for the education of Negroes, but denies that Lincoln University is a university other than in name, and states that it is merely an undergraduate college and has no instruction in law and no school of law in any way connected with it.

7a. Relator admits that Article 19 of Chapter 57, R. S. Mo., 1929, requires the Board of Curators of Lincoln University to reorganize said institution so that it shall afford to the Negro people of the state opportunity for training up to the standard furnished at the state university of Missouri whenever necessary and practicable; but states that the Board of Curators have not established a School of Law or offered instruction in law at Lincoln University; that they have no definite plans for establishing a School of Law or offering instruction in law at Lincoln University; that they cannot establish a School of Law or offer instruction in law at Lincoln University, even if they so desired, without curtailing or discontinuing some of the existing courses offered at Lincoln University, for the state legislature has not made any appropriation for the expansion of Lincoln University into offering professional courses or establishing a School of Law at Lincoln University, and there is no money otherwise available for such purposes; that the money now available to the Curators of the University is barely sufficient

to enable them to maintain and operate a first grade undergraduate course. The School of Law of the University of Missouri is open and established, and amply supplied with funds both from public sources and otherwise for its continuation. Relator declines to accept the chance that some day Lincoln University may have a law school or offer instruction in law instead of exercising his right to attend the School of Law of the University of Missouri. He is growing older each day and the time within which he can study and practise his profession, and perform public service in and for the State of Missouri, is growing correspondingly shorter. He must study law as soon as he can, consistent with maintaining his rights as a citizen and resident of the state.

8. Relator denies that the scholarships offered to Negroes by the state, acting through the Board of Curators of Lincoln University, are an equivalent of their right to attend and study the same subject in the University of Missouri. He denies that it is equal protection of the laws or due process within the meaning of the Fourteenth Amendment to the Constitution of the United States for the State of Missouri to exile its Negro citizens beyond its borders to study the same subjects offered to white students in the state university at home. He denies that any money equivalent could equalize for him the loss of the opportunity to have the special study in Missouri law and procedure which is offered to white students in the University of Missouri School of Law. Further relator does not wish to be accorded any

special or favored treatment because of his race or color, and wishes only to have the same rights under the same conditions as the white citizens of the state similarly situated.

9. Relator denies that the moneys appropriated by the legislature of Missouri for Negroes to study outside the state have been adequate or sufficient to meet the legitimate demands of Negro citizens who have desired and qualified for out-of-state training.

10. Relator admits that the Curators of the University of Missouri are obliged by Section 9639, R. S. Mo., 1929, to take an oath to support the Constitution of Missouri and faithfully demean themselves in office, as alleged in the return; but says that they are also required by the same Section to take oath that they will support the Constitution of the United States (which was omitted in the return). He denies that the foregoing provision, or the Constitution or laws or public policy of Missouri have bound the respondents to refuse admission in the University of Missouri to qualified Negroes, and states that Section 9639 compels the Curators of the University of Missouri severally not to refuse admission to qualified Negroes solely on account of race and imposes upon them and their agents a plain, legal, ministerial duty to admit qualified Negroes on the same terms and conditions as qualified whites.

11. Relator denies that in refusing to admit him as a student in the School of Law of the University of Missouri respondents have acted lawfully and in conformity with their constitutional



and statutory obligations, and says that they have acted illegally, arbitrarily, and in violation of the Constitution and laws of Missouri, and the Constitution of the United States, and have denied him the equal protection of the laws and due process of law, solely on account of his race and color, in violation of the Fourteenth Amendment of the Constitution of the United States.

### III.

12. For further answer to part III of respondent's return, relator says that the Constitution of United States, the Constitution of Missouri and laws of said State give him the right to be admitted as a first year student of the School of Law of the University of Missouri, being otherwise qualified therefor and being denied admission solely on account of his race and color. He denies that the State accords him otherwise an equal opportunity to study law comparable with that afforded white students in the School of Law of the University of Missouri. He denies that it is constitutional to exile Negroes to study in other states solely on account of race while white students are offered the same subjects in a public institution in Missouri; but that even if it be held constitutional in principle, the money appropriated by the state for such purpose has always been inadequate to meet the demands.

13. Relator admits that Negro students are admitted to the law schools in the state universities in Kansas, Nebraska, Iowa and Illinois; that he is qualified for admission to the same. But he

is a citizen and resident of Missouri, not of said other states, and desires to have the same rights which are accorded white citizens and residents of Missouri to attend the School of Law of the University of Missouri, and denies that he can obtain in said other law schools instruction in Missouri law to the same extent of intensity and same high degree of scholarship which are available in the School of Law of the University of Missouri.

14. Relator further says that he has not waived or forfeited his right to attend the School of Law of the University of Missouri, for that he did not receive his Bachelor's degree from Lincoln University until August, 1935; and applied in June, 1935, and again in August, 1935, for admission to the first year class of the School of Law of the University of Missouri for the academic term beginning September, 1935; and would have registered and attended said School of Law except for the arbitrary and illegal acts of the respondents in excluding him solely on account of race and color.

#### IV.

15. As to paragraphs and allegations contained in respondents' return that deny corresponding allegations in the petition and alternative writ filed and issued herein, relator joins issue.

S. R. REDMOND,  
CHARLES H. HOUSTON,  
HENRY D. ESPY,  
*Attorneys for Relator.*

---

*State of Missouri, City of St. Louis, ss.*

Personally appeared before me, the undersigned Notary Public in and for the City and State aforesaid, the within named Lloyd L. Gaines, who being first duly sworn on his oath states that the matters in said return above which are stated as matters of fact he knows to be true, and those stated as of informations and belief he verily believes to be true.

Lloyd L. Gaines.

Subscribed and sworn to before me this 8th day of June, 1936.

(Seal)

Arnett G. Lindsay.

Thereafter in due time, during the June Term, 1936, of said court respondents filed their reply to relator's reply to respondents' return which reply, omitting caption, is as follows:

### RESPONDENTS' REPLY TO RELATOR'S REPLY TO RESPONDENTS' RETURN.

Now come the above named respondents and for their reply to the relator's reply to respondents' return to the alternative writ of mandamus herein, respondents state:

#### I.

Respondents deny that when Section 9657, R. S. Mo. 1929, is read in the light of the Constitution of the United States, especially the Fourteenth Amendment thereto, respondents are under a plain, legal, ministerial duty to admit relator to the School of Law of the University of Missouri,

at the next regular admission period for the first year class of said school, upon relator's paying the lawful uniform fees and meeting the lawful uniform requirements governing admission to said class.

## II.

Respondents deny that under the Constitution of Missouri, the laws and public policy of the state, when construed and reconciled with the requirements of the Constitution of the United States, especially the Fourteenth Amendment thereto, respondents have arbitrarily or illegally rejected relator's application for admission to the first year class of the School of Law of the University of Missouri solely on account of the fact he is a negro; and deny that respondents are under a plain, legal, ministerial duty to admit relator upon the same terms and conditions imposed upon qualified students who are not negroes and who apply for admission to the first year class of the School of Law.

Respondents deny that Section 5 of Article XI of the Constitution of Missouri, construed and reconciled with the Constitution of the United States, especially the Fourteenth Amendment thereto, could not establish or perpetuate the University of Missouri as a white institution; and respondents deny that the alleged constitutional requirement (that an equal university and educational opportunity be offered to qualified negroes) necessarily required that same be offered within the State of Missouri.



Respondents deny that the free public schools established for negroes throughout the state by and large are inferior and do not offer equal educational opportunities as the white free public schools.

Respondents deny that Lincoln University is a university merely in name, and deny that Lincoln University is merely an undergraduate college.

Respondents deny that they have any knowledge of information sufficient to form a belief as to the truth of the allegation that the Board of Curators of Lincoln University "have no definite plans for establishing a school of law or offering instruction in law at Lincoln University;" and respondents therefore deny said allegation.

Respondents deny that the Board of Curators of Lincoln University cannot establish a school of law or offer instruction in law at Lincoln University, if they so desired, without curtailing or discontinuing some of the existing courses offered at Lincoln University; and deny that the state legislature has not made any appropriation for the expansion of Lincoln University into offering professional courses or establishing a school of law at Lincoln University; and deny that there is no money otherwise available for such purposes, and deny that the money now available to the Curators of Lincoln University is barely sufficient to enable them to maintain and operate a first-grade undergraduate course.

Respondents deny that special study in Missouri law and procedure is offered to white students in the University of Missouri School of Law.

Respondents deny that the moneys appropriated by the legislature of Missouri for negroes to study outside the state have been inadequate or insufficient to meet the legitimate demands of negro citizens who have desired and qualified for out-of-state training.

Respondents deny that Section 9639, R. S. Mo. 1929, compels the Curators of the University of Missouri severally not to refuse admission to qualified negroes solely on account of race; and respondents deny that said section imposes upon said Curators or their agents the plain, legal, ministerial duty to admit qualified negroes on the same terms and conditions as qualified whites; and respondents deny that negroes are or could be legally qualified to become students in the University of Missouri or any school or department thereof.

Respondents deny that respondents have acted illegally, arbitrarily or in violation of the Constitution and laws of Missouri, or of the Constitution of the United States; and respondents deny that respondents have denied relator the equal protection of the laws and due process of law, solely on account of his race and color, in violation of the Fourteenth Amendment to the Constitution of the United States.

### III.

Respondents deny that the Constitution of the United States, the Constitution of Missouri and the laws of said state give relator the right to be admitted as a first year student of the School of Law of the University of Missouri; and deny that

relator is qualified therefor; and deny that relator is being denied admission solely on account of his race and color.

Respondents deny that the State of Missouri does not accord relator an equal opportunity to study law comparable with that afforded white students in the School of Law of the University of Missouri.

Respondents deny that the provisions made by Article 19, Chapter 57 of the Revised Statutes of Missouri 1929 (authorizing the Board of Curators of Lincoln University pending the full development of Lincoln University to arrange for the attendance of negro residents of the State of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the State University of Missouri, and which are not taught at the Lincoln University, and to pay the reasonable tuition fees for such attendance) constitutes or can be fairly characterized as an "exile" of negroes to study in other states; and respondents deny that the money appropriated by the State of Missouri for such purposes has always been inadequate to meet the demands.

Respondents deny that relator cannot obtain in the law schools in the state universities in Kansas, Nebraska, Iowa and Illinois instruction in Missouri law to the same extent of intensity and same high degree of scholarship which are available in the School of Law of the University of Missouri.

Respondents deny that relator ever had or now has the right to attend the School of Law of the University of Missouri; and respondents deny that

there have been any "arbitrary and illegal acts of the respondents in excluding him (relator) solely on account of race and color."

WHEREFORE, having fully replied, respondents pray the judgment of the court as heretofore prayed in their return to the alternative writ of mandamus.

FRED L. WILLIAMS,  
NICK T. CAVE,  
WILLIAM S. HOGSETT,  
*Attorneys for Respondents.*

#### TRIAL, SUBMISSION AND JUDGMENT.

And thereafter, at the June Term, 1936, of said court, on July 10, 1936, said cause being called for trial, and all parties appearing ready for trial, said cause was tried before the Honorable W. M. Dinwiddie, judge of said court.

And thereafter, at the conclusion of said trial, said cause was submitted and taken under advisement by the court; and later, on July 24, 1936, during the said term, the court found for the respondents and duly entered judgment for the respondents and against appellant and quashed the alternative writ of mandamus. Said judgment is in words and figures as follows (caption omitted):

#### JUDGMENT ENTRY

Now on this 24th day of July, 1936, at the June Term, 1936, come the parties by their attorneys of record; and the court having heretofore heard the evidence and the arguments of counsel,



and the case having been tried, submitted and taken under advisement for the filing of briefs by the respective parties, and the court now being fully advised in the premises doth now find the issues herein in favor of the respondents and against the relator.

WHEREFORE, it is by the court considered, ordered and adjudged that the relator Lloyd L. Gaines take nothing by his writ herein; that relator is not entitled to any relief prayed herein, and is not entitled to a writ of mandamus against the respondents herein; and that the alternative writ of mandamus herein be, and the same is now, hereby quashed, set aside and for naught held; and that this suit be and the same is now hereby dismissed, and that respondents go hence discharged without day and recover from relator their costs herein, and that execution issue therefor.

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#### MOTION FOR REHEARING FILED.

And thereafter, within four days after the judgment and decree, and during the same term, on July 24, 1936, appellant filed his motion for a rehearing in said cause.

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#### MOTION FOR REHEARING OVERRULED.

And thereafter, on July 24, 1936, during the June Term, 1936, of said court, the court overruled appellant's Motion for a Rehearing.

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### **AFFIDAVIT FOR APPEAL FILED.**

And thereafter, during the said June Term, on July 24, 1936, appellant filed an affidavit for an appeal in said cause and said appellant was granted an appeal to the Supreme Court of Missouri.

### **BILL OF EXCEPTIONS FILED.**

And thereafter, within the time allowed by law, and by rule of the Supreme Court of Missouri, appellant duly presented his bill of exceptions in said cause, which bill of exceptions has been duly filed, sealed and allowed by Honorable W. M. Dinwiddie, judge of said court, the same was filed and made a part of the record in said cause.

The bill of exceptions so filed and made a part of the record in said cause is in words and figures, omitting caption, as follows:

### **BILL OF EXCEPTIONS**

(Caption omitted)

**BE IT REMEMBERED**, That on Friday, the 10th day of July, 1936, the same being also one of the days of the regular June term, 1936, of the Circuit Court of the County of Boone, begun and holden at the City of Columbia, in the State of Missouri, the above entitled cause came regularly on to be heard and tried upon the issues theretofore joined therein before the Honorable W. M. Dinwiddie, Judge of said Court; whereupon, the following proceedings were had herein, to-wit:

## APPEARANCES

Messrs. S. R. Redmond, of St. Louis; Charles H. Houston, of New York City; and Henry D. Espy, of St. Louis, appeared as counsel for relator. The relator, Lloyd L. Gaines, was also present in person.

Messrs. Nick T. Cave, of the firm of Cave & Hulen, Columbia; William S. Hogsett and Ralph E. Murray, of the firm of Hogsett, Smith, Murray and Trippe, Kansas City; and Fred L. Williams, of the firm of Williams, Nelson and English, St. Louis; appeared as counsel for respondents. Respondent S. W. Canada, Registrar, and members of the Board of Curators of the University of Missouri, were also present in person.

Mr. Redmond made a statement to the Court on behalf of Relator.

Mr. Hogsett made a statement to the Court on behalf of Respondents.

The Court: You say there is not much dispute over the facts. Can we shorten up the introduction of evidence?

Mr. Hogsett: Counsel and we have agreed upon many of them, and we will expedite the time spent in the offering of the proof.

The Court: Very well. Call your first witness.

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## RELATOR'S EVIDENCE

The relator, to maintain the issues upon his part to be maintained, offered and introduced evidence as follows, to-wit:

LLOYD L. GAINES, being duly produced, sworn and examined, testified as follows, to-wit:

*Direct Examination of Lloyd L. Gaines by  
Mr. Redmond*

Q. State your name, please. A. Lloyd Lionel Gaines.

Q. Where do you live? A. 3932 West Belle Place, St Louis.

Q. Where were you born? A. In Mississippi.

Q. In what year? A. 1911.

Q. How old are you now? A. Twenty-five.

Q. How long have you lived in Missouri?

A. Ten years.

Q. In St. Louis? A. Ten years.

Q. Are you a taxpayer? A. Incidental tax.

Q. What tax do you pay? A. Sales tax, internal tax on luxuries, and amusement tax.

Q. What are your educational accomplishments? A. I have been in school.—I completed a high school and an A. B. in college.

Q. What high school did you finish? A. Vashon High School, St. Louis, Missouri.

Q. What year? A. 1931.

Q. What college have you finished? A. I attended Stowe College, 1931-32, and finished Lincoln University in August, 1935.

Q. What degree did you receive? A. A. B.

Q. Have you made up your mind as to what you wish to do in life? A. I have.



Q. What do you wish to do? A. I wish to practise Law.

Q. Have you made application to any schools, to enter the Law School, A. I have.

Q. To what schools have you made application? A. I have only made application to the University of Missouri.

Q. Do you remember when you made the application? A. Yes, sir.

Q. When was that? A. It was August 19th, 1935.

Q. Have you made inquiries as to any other law school? A. Yes, sir.

Q. What other law schools? A. The University of Iowa, and University of Illinois.

Q. I now show you Relator's Exhibit A and ask you what it is. (Handing an envelope to witness) A. It was a letter from the Registrar of the University of Iowa, in which he remarked that he sent me a catalogue and also application blanks for the school.

Mr. Redmond: I offer this in evidence,—it is an envelope.

Mr. Williams: No objection to the envelope.

The Court: Admitted.

Said Relator's Exhibit A is an envelope bearing printed return card in left upper corner as follows: "Return in five days to The State University of Iowa Office of the Registrar Iowa City," canceled 3c stamp, rubberstamped "Iowa City, Iowa, June 15, 4 PM, 1935," and being addressed "Mr. Lloyd L. Gaines, 1000 Moreau Drive, Jefferson City, Mo."

Mr. Redmond: Q. Why didn't you go to the University of Iowa,—to the Law School. A. Well, at the time I wrote them for a catalogue, I also wrote several other Universities and after comparing the catalogues, or, rather, the courses of studies offered, I decided that Missouri U. would give me more largely what I wanted than any other colleges under consideration.

Q. You preferred the Missouri University Law School to all others? A. Yes, I did.

Q. You stated that on August 19th, 1935, you applied to the Law School of the University of Missouri. Did you receive any communication from anyone there? A. Yes, I did.

Q. From whom? A. The registrar, Mr. Canada, sent me a catalogue, and urged me to have my transcript sent to the University, and told me that as soon as he received the transcript he would advise me relative to my application to the Law School.

Mr. Hogsett: May I make this suggestion: Why don't you just offer all the correspondence you have, in chronological order,—we will admit it. I think in this group of photostatic copies is a record of every bit of the correspondence.

Mr. Houston: We will take it out and look at it.

Mr. Hogsett: And here are the originals, instead of the photostatic copies, if you prefer them.

NOTE: Counsel for relator examined copies:

Mr. Hogsett: At the request of counsel, I produce photostatic copies of all the correspon-

dence back and forth between the relator, Gaines, and the University authorities or representatives. I am advised that this is a complete file and I am willing that they may use this if they desire, to shorten the time of separate identification of the letters one by one.

NOTE: The various photostatic sheets referred to were now marked by the reporter as Relator's Exhibits B, C, D, E, F, G-1, G-2, H, I, J-1, J-2, K, L, M, N-1, and N-2, respectively.

Mr. Redmond: I offer in evidence Relator's Exhibits B to N-2.

The Court: Admitted.

Mr. Redmond: I will read Exhibit B.

NOTE: Mr. Redmond now read Exhibits B, C, D, and E to the Court.

Mr. Hogsett: Mr. Redmond, will you admit in the record,—as you did in the opening statement,—that at the time of the letters thus far written by Mr. Canada, Mr. Canada had no way to know and did not know that the relator was a Negro? Will you admit that?

Mr. Redmond: Surely.

The Court: Very well. Let it be so admitted.

NOTE: Mr. Redmond read Exhibit F to the Court.

Mr. Redmond: I won't read Exhibits G-1 and G-2 which are a copy of the petitioner's transcript which was sent from Lincoln University to

the University of Missouri; but I will ask if you will stipulate that this transcript shows enough work having been done for admission,—all other questions being out of the case?

Mr. Hogsett: I think that is a fact, and we therefore admit it.

The Court: It is admitted that the transcript of the work done and the credit received at Lincoln University would be sufficient to admit him to the Law School.

Mr. Hogsett: Provided, he were otherwise eligible.

The Court: Very well.

NOTE: Mr. Redmond read Exhibit H to the Court.

The Court: Well, I don't see that you need to read all these letters, unless you want to. I will read them, myself.

Mr. Houston: They will all be copied in the record anyway,—that is all right.

Said Exhibit B to N-2, both inclusive, are in words and figures as follows, to-wit:

#### RELATOR'S EXHIBIT B

1000 Moreau Drive,  
Jefferson City, Mo.,  
June 12, 1935.

Registrar,  
Missouri University,  
Columbia, Missouri.  
Dear Sir:



Please send me a copy of one of your current,  
general catalogues.

Sincerely,

Lloyd L. Gaines

### RELATOR'S EXHIBIT C

June 18, 1935

Mr. Lloyd L. Gaines  
1000 Moreau Drive  
Jefferson City, Mo.  
Dear Sir:

I am pleased to learn that you are interested in work in the University of Missouri. Under separate cover, I am sending you a copy of our latest General catalog.

One deciding to enter the University should admits his credentials well in advance of the term in which he wishes to enroll so that his admission may be arranged.

Very truly yours

Registrar.

PH

### RELATOR'S EXHIBIT D

Aug. 21 1935  
3932 W. Belle Pl.,  
St. Louis, Mo.,  
August 19, 1935

To the Registrar,  
Missouri University,

Columbia, Missouri.

Dear Sir:

I should like to enter the School of Law at Missouri University this fall. Please send me a formal application blank and complete information regarding fees and expenses.

Sincerely,

Lloyd L. Gaines

---

RELATOR'S EXHIBIT E

August 24, 1935

Mr. Lloyd L. Gaines  
3932 W. Belle Place  
St. Louis, Missouri  
Dear Sir:

In response to your letter of August 19 I am sending you under separate cover a copy of the general catalog. Beginning on page 63 you will find information concerning fees and expenses.

You should have the registrar of the college or university which you have attended send me an official transcript of your record including a statement of your high school credits. When this is received I shall be glad to notify you regarding your admission to our School of Law.

If the catalog does not give you all the information you desire, please do not hesitate to write me again.

Very truly yours,

Registrar.

**RELATOR'S EXHIBIT F**

Gaines, Lloyd L.

3932 W. Belle Pl.,  
St. Louis, Missouri.  
August 27, 1935.

Aug. 28, 1935.

Registrar,  
Missouri University,  
Columbia, Missouri.

My dear Sir:

I am writing my college registrar today to mail you a copy of my transcript in order that I might enter the M. U. Law School.

—Lloyd L. Gaines

---

**RELATOR'S EXHIBIT G-1**

(Photo)

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**RELATOR'S EXHIBIT G-2**

(Photo)

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**RELATOR'S EXHIBIT H**

(Photo)

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## RELATOR'S EXHIBIT I

(REPORTER'S NOTE: Same appears on regular Western Union Telegram blank, the printed portions of which are not copied here.)

SEPTEMBER 18 1935

LLOYD L GAINES  
3932 WEST BELLE PLACE  
ST LOUIS MISSOURI

REGARDING YOUR ADMISSION TO LAW SCHOOL PRESIDENT FLORENCE AND MEMBER BOARD LINCOLN UNIVERSITY WILL CONFER THIS AFTERNOON IN JEFFERSON CITY ABOUT THE MATTER SUGGEST YOU COMMUNICATE WITH PRESIDENT FLORENCE REGARDING POSSIBLE ARRANGEMENTS AND FOR FURTHER ADVICE

PAID S W CANADA REGISTRAR  
OFFICIAL BUSINESS UNIV MISSOURI  
REGISTRAR'S OFFICE  
UNIV MISSOURI

RELATOR'S EXHIBIT J-1 and J-2

SEP 27 1935  
3932 W. Belle Place,  
St. Louis, Missouri,  
September 24, 1935.

President Walter Williams,  
University of Missouri,  
Columbia, Missouri.

My dear Sir:



For a long time prior to my graduating from Lincoln University, Jefferson City, Missouri, August 8, 1935, law was my choosen field for further study. Having graduated from Lincoln with the Bachelor of Arts degree in history, I selected Missouri University School of Law because of its particular emphasis upon Missouri law. Upon filing my application for entrance, however, Registrar S. W. Canada wired me to communicate with President Florence of Lincoln after his conference of September 18 with Dr. Elliff of the Lincoln university Board of Curators. President Florence said that Dr. Elliff advised him to call my attention to Section 9622 of the 1929 Revised Statutes of Missouri offering tuition to a school of any adjacent state carrying a graduate program of study parallel to the one offered by Missouri University.

President Williams, I am a student of limited means but a commendable scholastic standing. May I depend upon you to see that I am admitted to Missouri University, where I am sure of getting what I want at a cost that is most reasonable?

An immediate reply would be highly appreciated.

Very sincerely yours,

Lloyd L. Gaines

---

RELATOR'S EXHIBIT K

3932 W. Belle Place,  
St. Louis, Missouri  
September 24, 1935

Att. Geo C. Willson,  
Boatmen's Bank Bldg.,  
St. Louis, Missouri  
My dear Sir:

For a long time prior to my graduating from Lincoln University, Jefferson City, Missouri, August 8, 1935, law was my choosen field for further study. Having graduated from Lincoln with the Bachelor of Arts degree in history, I selected Missouri University School of Law because of its particular emphasis upon Missouri law. Upon filing my application for entrance, however, Registrar S. W. Canada wired me to communicate with President Florence of Lincoln after his conference of September 18 with Dr. Elliff of the Lincoln University Board of Curators. President Florence said that Dr. Elliff advised him to call my attention to Section 9622 of the 1929 Revised Statutes of Missouri offering tuition to a school of any adjacent state carrying a graduate program of study parallel to the one offered by Missouri University.

Att. Willson, I am a student of limited means but a high scholastic standing. May I depend upon you to see that I am admitted to Missouri University, where I am sure of getting what I want at a cost that is most reasonable?

An immediate reply would be highly appreciated.

Very sincerely yours,  
(Signed) LLOYD L. GAINES

---

## RELATOR'S EXHIBIT L

Taylor, Chasnoff & Willson  
St. Louis, Mo.

September 26, 1935

Mr. Lloyd L. Gaines,  
3932 W. Belle Place,  
St. Louis, Missouri

Dear Mr. Gaines:

COPY

Absence from the City has prevented an earlier answer to your letter of September 24th.

The matter of admission to the University is handled in the first instance by the administrative officers of the University, of which President F. A. Middlebush is the head. I suggest, therefore, that you take the matter up through these channels. If, subsequently, you desire the matter presented to the Board of Curators, I suggest that you communicate with the President of the Board, who is Senator F. M. McDavid, Woodruff Bldg., Springfield, Missouri.

Yours very truly,

(Signed) Geo. C. Willson

GCW:BC

## RELATOR'S EXHIBIT M

TAYLOR, CHASNOFF & WILLSON  
Attorneys and Legal Counselors  
Boatmen's Bank Building  
St. Louis

SEP 28 1935

Daniel C. Taylor

19-15-1935

Jacob Chasnoff

George C. Willson

Hugo Monnig

James V. Frank

Alex R. A. Garesche

J. H. Cunningham, Jr.

James S. McClellan

Lewis H. Carstarphen

Eric P. Newman

September 26, 1935

Honorable F. A. Middlebush, President,

University of Missouri,

Columbia, Missouri

Dear Mr. President:

Herewith copy of letter received from Lloyd L. Gaines regarding admission to the University, with copy of my reply.

Yours very truly,

Geo. C. Willson

GCW:BC

Encs.

RELATOR'S EXHIBIT N-1, N-2

March 31, 1936

Mr. Lloyd L. Gaines

3932 W. Belle Place

St. Louis, Missouri



Dear Sir:

The following resolution was adopted by the Board of Curators of the University of Missouri at a meeting held at the University, Friday, March 27, 1936:

"WHEREAS, Lloyd L. Gaines, colored, has applied for admission to the School of Law of the University of Missouri, and

"WHEREAS, the people of Missouri, both in the Constitution and in the Statutes of the State, have provided for the separate education of white students and negro students, and have thereby in effect forbidden the attendance of a white student in Lincoln University, or a colored student at the University of Missouri, and

"WHEREAS, the Legislature of the State of Missouri, in response to the demands of the citizens of Missouri, has established at Jefferson City, Missouri, for negroes, a modern and efficient school known as Lincoln University, and has invested the Board of Curators of that institution with full power and authority to establish such departments as may be necessary to offer to students of that institution opportunities equal to those offered at the University, and have further provided, pending the full development of Lincoln University, for the payment, out of the public treasury, of the tuition, at universities in adjacent states, of colored students desiring to take any course of study not being taught at Lincoln University, and

"WHEREAS, it is the opinion of the Board

of Curators that any change in the State system of separate instruction which has been heretofore established, would react to the detriment of both Lincoln University and the University of Missouri,

"THEREFORE, be it resolved, that the application of said LLOYD L. GAINES be and it hereby is rejected and denied, and that the Registrar and the Committee on Entrance be instructed accordingly."

This is to inform you that in accordance with the foregoing your application for admission to the University is rejected and denied.

Very truly yours,

S. W. Canada, Registrar

SWC:MB

---

Mr. Redmond: Q. On September 18th, Mr. Canada sent you a telegram advising you that President Florence and a member of the Board of Lincoln University would confer concerning your application. Did you get a letter from President Florence? A. Not immediately.

Q. Did you get a letter? A. Yes, sir.

NOTE: A paper was produced by counsel which was marked by the Reporter as Relator's Exhibit O.

Mr. Redmond: Q. I show you Relator's Exhibit O and ask you if this is the letter you received from President Florence? A. Yes, sir, that is it.

Mr. Redmond: I would like to offer it in evidence, Your Honor.

Mr. Hogsett: No objection.

The Court: Admitted.

Mr. Redmond read Exhibit O to the court, same being in words and figures as follows, to-wit:

### LINCOLN UNIVERSITY

Founded as Lincoln Institute 1866  
by the 62nd and 65th United States  
Colored Infantry, and supported by  
The State of Missouri

Jefferson City, Mo.  
September 23, 1935

Office of

The President

Mr. Lloyd L. Gaines  
3932 West Belle Place  
St. Louis Missouri

Dear Mr. Gaines:

I wish to acknowledge receipt of your letter concerning the telegram received from the Registrar of the University of Missouri.

In reply I wish to state that the member of the Board of Curators referred to in the telegram is Dr. J. D. Elliff, president of the Board.

Dr. Elliff stated that he had been informed that you had made application for admission to the Law School of the University of Missouri. He asked me to call your attention to Section 9622.

of the Revised Statutes of Missouri, 1929, which reads as follows:

**SEC. 9622. MAY ARRANGE FOR ATTENDANCE AT UNIVERSITY OF ANY ADJACENT STATE—TUITION FEES.—**

Pending the full development of the Lincoln university, the board of curators shall have the authority to arrange for the attendance of Negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the state university of Missouri, and which are not taught at the Lincoln university and to pay the reasonable tuition fees for such attendance; *provided* that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department. (Laws 1921, p. 86, Sec. 7.)

If you desire to apply for aid under the provisions of the Statute quoted above, I advise you to write Mr. Lloyd King, State Superintendent of Schools, Jefferson City, Missouri.

Hoping that this is the information which you requested in your letter, I am

Sincerely yours,

(Signed) Charles W. Florence  
PRESIDENT

SWF:JTI

Mr. Redmond: Q. What did you do after you got that letter? A. After receiving the



letter I waited a few days and then wrote the National Association for the Advancement of Colored People, regarding the matter.

Q. Did you decide to take advantage of the scholarship mentioned in the letter, or not? A. No, sir, I did not.

Q. Why not? A. Well, for several reasons, as I have already said; I had decided that Missouri U. offered the best course in Law,—more nearly what I wanted,—and, moreover, those scholarships, or otherwise known as tuition to out-of-state schools in the adjacent states, are not satisfactory, all the knowledge I had of them up to that time.

Q. Just tell us why they were not satisfactory. A. Well, in a number of cases I have seen letters to the effect that—

Mr. Hogsett: We object to hearsay. This was obviously hearsay. He can state his reasons, but to state letters from somebody else is hearsay.

The Court: He may state what he knows, but not what somebody else told him.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Redmond: Q. Have you any knowledge of your own concerning the administration of these out-of-state scholarships? A. I have no personal knowledge on that.

Q. Well, tell us why you wanted to go to the University of Missouri Law School,—what were your reasons? A. After looking over the dif-

ferent catalogues and studying the offerings of the different law schools, and seeing that Missouri U. was a very reputable law school,—that was the reason I wanted to come,—just because it is a very good law school, as advertised. Secondly, because it is cheaper to attend Missouri U. than to go out of state. To illustrate, total tuition in law at Missouri University, at \$4.00 for a credit hour, seventy-nine hours, would run \$316.00. The total tuition for the University of Iowa accounted at \$186.00 a year for three years would be \$504.00. That is a difference between Missouri U. and Iowa of \$188.00. The total tuition in Illinois U. for the three years course in law is \$450.00, or a difference of \$134.00. After glancing that over, I decided it would be cheaper to come here to Missouri U. Moreover, taking into consideration the facts of transportation and communication, and being here in Columbia, would be nearer home than any of the other places named, and if I wanted to make a fast trip home and back, the expense would not be as high, and it might be necessary at times to make that trip; and long distance calls by telephone would not be as expensive.

A third reason why I decided I would like to come to Missouri U. is that Missouri U. is the only law school within the state of Missouri that I am qualified to go to,—which I am qualified to attend. I wish to practice law here within the state of Missouri and by the advertisement in the catalogue of the University of Missouri, it emphasizes the fact that they publish a Missouri Law Review, and inasmuch as the editorial staff

of that Law Review is composed of students in the college, as well as the faculty members of the Law Department, and inasmuch as this Law Review is published for the state and its bar it emphasizes in a number of cases Missouri Law, and I thought it would be to my advantage to be in a school where Missouri Law came before the class room with sufficient frequency to give me some familiarity with the law where I would wish to practice, because it would undoubtedly be an advantage to know particulars about the law in your own locality rather than to always have to resort to research work. A case might depend on that because you might be in court when a technicality came up and you would not have time to look it up.

Q. Where do you intend to practice law?

A. St. Louis.

Q. Are you in a financial position to take care of the expense, the uniform expense required of students in the University of Missouri? A. Yes, sir, I am.

Q. And if you are admitted you will obey all the rules and regulations? A. Yes, sir.

Mr. Hogsett: At the request of counsel, respondents are willing to admit that if a tender of fees had been offered and made by the relator it would have been rejected by the respondents, for each and all the reasons asserted in their return to the alternative writ.

The Court: Let it be so admitted.

Mr. Redmond: Q. Does Lincoln University

have a Law School or a Law Department? A. No, sir; it does not.

Q. What departments does Lincoln University have,—Lincoln University at Jefferson City?

A. It has an undergraduate department leading to a degree in Education—

The Court: I suppose it will be admitted that Lincoln University does not maintain a Law School?

Mr. Hogsett: Yes, sir.

Mr. Redmond: Q. Is there any graduate work at Lincoln University? A. Not that I know of.

Q. Was there any when you were there? A. No, sir.

Q. Have you lost any time in preparing your self for your profession? A. Yes, I have.

Mr. Hogsett: We object to that as irrelevant. I don't know how ~~that~~ has any bearing on any issue here.

The Court: Well, he has answered, but I think the objection would be sustained. I don't see the purpose of it.

Mr. Redmond: Well, I want to except to the ruling and to make proof that if we were permitted to interrogate the witness along this line we would show that because of the refusal of the University of Missouri to admit Relator he has already lost one year of his life in the pursuit of his profession and the study of Law.

Mr. Hogsett: We object to the offer of proof as wholly irrelevant, but desiring that the relator have full opportunity to make his proof, knowing



that the court will receive that which is proper and reject that which is improper, we withdraw the objection.

The Court: Very well, the objection is withdrawn. Answer the question.

The Witness: A. Yes, I lost a year's time.

Mr. Hogsett: At the request of counsel for relator, the respondents admit that on January 24, 1936, this relator filed a mandamus suit in this court against S. W. Canada, Registrar, and we are willing that the Court may take judicial notice of the files in that case for the purpose of showing the nature of that case.

Mr. Houston: And after the answer of the Board of Curators on March 27th, that suit was dismissed by stipulation.

Mr. Hogsett: That is all right.

Mr. Cave: That action was dismissed by stipulation.

*Cross Examination of Lloyd L. Gaines  
by Mr. Hogsett*

Q. You testified that you were born in Mississippi and came to St. Louis about ten years ago? A. Yes, sir.

Q. You named the schools in which you were educated in St. Louis? A. Yes, sir.

Q. You didn't name the grammar school you attended in 1926, or the Lincoln grammar school in 1927,—you attended those schools did you not?

A. Yes, sir.

Q. Those are all public schools of St. Louis.

in which you received free education? A. Yes, sir.

Q. They are all well managed and well operated colored schools? A. Yes, sir.

Q. That is also true of Lincoln University,—you found that to be a well managed high grade institution, with a high level of instruction and scholarship training, and consequently on a level with that of Missouri University—is that true?

A. I would like to qualify my answer on that.

Q. Well, you haven't made any yet,—what is your answer? A. I do not think that Lincoln University is what you would call a very high rating school. In a number of cases a student's graduation has been delayed because he could not get the course he wanted when he wanted it, and at other times he could not get the course at all and would have to substitute anything else just to fill in hours.

Q. Do you remember when your deposition was taken in this case on the 27th of May, this year? A. Yes, sir.

Q. In St. Louis. At that time you testified that "I found Lincoln University to be a well managed, well conducted University and on a plane with Missouri University, as far as my knowledge goes," didn't you? A. May I see that, please?

Q. Yes, sir, page 73. (Showing witness deposition.) Beginning on page 72: "Question: You did avail yourself of education at Lincoln University and went through that University with the required course of study leading to the A. B. degree? Answer: Yes. Question: You

found it to be a well managed, well conducted University, did you not? Answer: Yes. Question: And on a plane with Missouri University, as far as your knowledge goes? Answer: Yes." You testified that way, didn't you, A. Yes, sir.

Q. Was that testimony true or untrue? A. That testimony I would like to have interpreted in the light of the statement I have just made.

Q. Just answer, then you may qualify it as you please. Was the testimony you gave in St. Louis on May 27th, and which I have just read, true or untrue? A. Yes, it was true at that time.

Q. Now you may qualify, in the light of your former answer,—is that what you want? A. Yes, sir. Now that statement was true in the sense that Lincoln University is a well managed and well conducted University so far as it goes, and whether it is on—so far as I know it may be on a plane with Missouri University in its standards. But I said a moment ago that I would not call it a first rate University because you could not at all times get what you wanted. That is the difference in my statements.

Q. The only criticisms in this respect that you have to offer is that the curriculum there was not as broad as may be in other schools where they have a wider course of study,—is that what it boils down to? A. Well, it would not be a very high type of school.

Q. But, in the courses that they did give you found it to be a well conducted, well managed

University, and on a plane with Missouri University as far as your knowledge goes with respect to the courses they did offer? A. Yes, sir.

Q. That statement you are willing to make unqualifiedly aren't you? A. Yes, sir.

Q. Very good. Now from your experience as a student in the public schools of Missouri, grammar schools, one or two High Schools, College,—Lincoln University,—all of which were colored schools, you understood it was the public policy, law and constitution of Missouri to separate the Negro and white children for the purposes of education? A. Yes, sir.

Q. Now you also knew that Lincoln University was established for colored young men and women and Missouri University was established for and attended by white young men and women,—you knew of that grouping when you made your application? A. Yes, sir.

Q. You never have seen at Lincoln University a white student, have you? You knew it was an exclusively colored school, common sense told you? A. I don't exactly agree with that,—I don't know that is exclusively colored.

Q. Did you ever see a white student there? A. I cannot be sure.

Q. You mean the color of certain students was such you could not be sure whether they were white or colored,—is that what you mean? A. Yes, sir.

Q. Very good; but you do understand, and common sense and three years' experience told you that it was a colored University? A. Yes, sir.



Q. You knew that? A. Yes, sir.

Q. And have you ever seen a colored student in Missouri University? A. No, sir.

Q. Now with that knowledge and that experience,—fifteen years of it,—you nevertheless made application for enrollment in Missouri University, didn't you? A. Yes, sir, I did.

Q. And you got a letter dated September 23rd, 1935, from President Florence specifically calling your attention to the statute, and to your rights thereunder, didn't you? A. Yes, sir.

Q. Now you say that, having gotten that letter, you then wrote to the National Association for Advancement of Colored People? A. I said some days after having received it.

Q. About how long? A. May I have the date on that letter?

Q. Yes. (Handing witness a paper.) A. Well, it was the latter part of September.

Q. This letter is also the latter part of September. About how many days elapsed? A. About a week.

Q. Have you the date? A. I don't think I have.

Q. At the time of taking the deposition, you thought it was the 27th of September. A. Somewhere along there.

Q. Within two days after you got this letter calling your attention to your rights under the Missouri statute, you were in communication with the N. A. A. C. P.? A. Yes, sir.

Q. What is the N. A. A. C. P.? A. I don't believe I understand your question.

Q. What do the initials stand for? A. National Association for the Advancement of Colored People.

Q. You understood what this telegram meant that you got on the 18th of September from Mr. Canada, and you understood the language of the law, and your rights under it, when you got the letter from President Florence, didn't you? A. Yes, sir, as a layman.

Q. Now with that full knowledge, after a full grasp of the meaning of the Law and your rights under it, you deliberately, and after the advice of counsel, chose not to avail yourself of those rights, didn't you? A. I don't believe that I could answer that "Yes" or "No"—You said "with full knowledge of the law." That is what I am trying to get into school to get. I am not sure I had a full knowledge of the Law.

Q. In your deposition, at page 87, did you say this: "Question: You showed at the time you wrote that letter that you had made some study of the provisions of Section 9622, giving you the right to have an education in the Law, in an adjacent state,—you had made that study of the Section of the Law so authorizing? Answer: Yes, sir. Question: And you shew a very clear grasp of its provisions,—so you fully understood it, didn't you? Answer: Yes, sir. Question: With that full grasp of its meaning, you have deliberately, and after consideration and advice of counsel, chosen to refuse to avail yourself of any of those rights? Answer: I have." A. Yes, sir.

Q. Was that testimony true or untrue.  
A. That testimony was true. May I qualify it?

Q. Certainly. A. Your question was that I had received a very clear grasp of the meaning of the statutes,—

Q. Didn't you? A. My answer was "Yes." Very well. Now you say, "With that full knowledge"—I interpret that to mean with the full knowledge and grasp that I had of it—

Q. Well, I think you are now engaging in a play upon words, Mr. Gaines. I don't mean to do that. I am trying to be plain with it. You understood it, Mr. Gaines,—that is the statute that is quoted in this matter,—you understood it because it is there within the four corners of that letter. You knew that? A. I believe I understood it.

Q. You knew you had certain rights under the 1921 Statute creating Lincoln University, didn't you? A. Yes, sir, it is in the statutes.

Q. You talked those rights over with these gentlemen now representing you and they advised you not to avail yourself of those rights, but to bring this suit? A. No, sir.

Q. You say they didn't? A. No, that is my idea,—about this suit.

Q. Did you discuss the question of your rights under the 1921 statute with these counsel?

A. Yes, sir.

Q. Did they advise you to apply to Lincoln University for those rights, or not to apply?

A. They did neither.

Q. They didn't advise you one way or the other, do you mean? A. That is right.

Q. On the contrary, didn't you testify in your deposition that they advised you to keep corresponding with Missouri University? A. I did.

Q. And they did that? A. Yes, sir.

Q. Thereby impliedly advising you not to avail yourself of the rights given you by the 1921 statute,—is that true? A. Admitted.

Q. Now you never at any time made an application to Lincoln University or its Curators or its officers or any representative for any of the rights, whatever, given you by the 1921 statute, namely, either to receive a legal education at a school to be established in Lincoln University or, pending that, to receive a legal education in a school of law in a state university in an adjacent state to Missouri, and Missouri paying that tuition,—you never made application for any of those rights, did you? A. No, sir.

Mr. Houston: I think counsel should agree in this regard: That the Acts of 1921 was amended in 1935,—the state does not pay the tuition now but all it pays is the differential.

Mr. Hogsett: That is a law question. We will present that at a later time. The unqualified duty is laid down in the 1921 statute that the Board of Curators of Lincoln University shall pay all the tuition. The appropriation act of 1935 appropriating enough money to pay the excess that these foreign states would charge over the fees a resident would pay in Missouri, cannot change the duty upon the Lincoln Board of Curators to pay the full tuition. That is a law ques-



tion and we will meet him on that at a later time. My question now is whether he ever sought by any means, express or implied, or made any request or suggestion to Lincoln University for any of the rights given him by the 1921 statute. That is certainly a competent—

Mr. Houston: That is all right.

Mr. Hogsett: Q. Your answer is that you never did,—that is true, isn't it? A. Yes, sir.

Q. Now you said you had made some inquiry as to the courses of instruction you would have received in the Universities of Iowa and Illinois?

A. Yes, sir.

Q. At the time your deposition was taken on May 27th of this year, you recall I asked you what was the system of instruction in the Missouri University Law School, Iowa Law School, Illinois Law School, and you didn't know,—is that true?

A. Yes, sir.

Q. You didn't then know whether the case book system or the text book system or the lecture system or what system was used at any one of those schools, did you? Just answer that question and then you may qualify. A. I would like to qualify it.

Q. The fact is that you didn't then know? A. Yes, sir.

Q. Or do you know? A. The fact is that I did not then know.

Q. Now you may qualify. A. Now your question was, whether in looking over those catalogues I had seen a statement about what system

was used, and I told you I did not see any such statement and, consequently, I didn't know.

Q. That is a fair statement of what you said. So at the time you made this election,—that is the point to this,—at the time you were making this election that you say you made, as between Missouri and these adjacent states, you didn't actually know what the system of instruction was in either school, did you? A. No, sir. But may I qualify that again?

Q. Yes, go ahead. A. It was not given in the catalogue and I had not been to those Universities and consequently did not know the manner of instruction.

Q. You are mistaken about that, are you not,—because do not all the catalogues of all the various schools give the case books used in the various courses? A. Not that I know of.

Q. Well, we will prove that they do when we offer our evidence.

The Court: Well, don't comment. Let's get along.

Q. At a certain page in the Bulletin of the College of Law of the University of Iowa you read that "the primary purpose of the school is to prepare students for the general practice of law in any jurisdiction where the system of Anglo-American law prevails,"—didn't you? A. Yes, and the continuation of the same paragraph says that special attention would be given to the needs of the residents of Iowa, for the practice of Law within Iowa.

Q. Now you know that the Negro is admitted

Q. Does the Missouri Law Review pay particular attention to Missouri law? A. Not necessarily. I might say this,—that we have articles of a general nature and we have some articles with special reference to Missouri law, but I would hate to say, or hesitate to say that we would pay particular attention to the Missouri law.

Q. Isn't it the policy that in every issue of the Missouri Law Review you have one leading article on Missouri Law? A. We have had, so far, one leading article on the Missouri law. It does not follow that future articles, or future issues will have such an article.

Q. May I show you? (Handing witness two copies of Missouri Law Review) As a matter of fact there has been one leading article each issue of the two issues of the Missouri Law Review on Missouri law, is that not right? A. Right.

Q. Were you at the School of Law when the catalogue of announcements for 1935-1936 was issued? A. Yes.

Q. I call your attention to the announcement there,—and I ask that this be introduced as our Exhibit Q, page 226— May I ask if you remember seeing that announcement about the Missouri Law Series? (Indicating) A. Yes, I have seen this.

Q. And in your position as Dean, no announcement would go out into the catalogue from the School of Law without your official approval,—is that right? A. That is right.

Q. Now may I have that a second, sir? (Receiving Exhibit Q from witness) May I read this to the court? (Reading)

"The School of Law publishes the Law Series of the University of Missouri Bulletin. The purpose of this publication is to present to the Missouri Bar the results of legal study and research in the field of Missouri law carried on at the School. The Series is edited by the faculty and a board of student editors chosen by the faculty from the members of the second and third-year classes. Student editors are chosen on the basis of legal scholarship. Election to the board is an honor and a student editor has an unusual opportunity to gain experience in legal research, which should better fit him for the practice of law.

"Each number of the Series contains at least one leading article on some phase of Missouri law written by a member of the faculty and notes on recent Missouri cases, written by student editors under the direction of a member of the faculty." (Exhibit Q, page 226).

That was the official policy of the Missouri Law Series, was it, during the time of your Deanship?

A. Yes, I made a mistake, several numbers were published of the old Series during my first year here, and I cannot say whether or not that was a policy. It is true that the statement appears in the catalogue, but I did not discuss it with the faculty nor was there any discussion of the old Law Series while I was Dean of the Law School. That is a statement that appears there without



in Kansas, Nebraska, Iowa and Illinois Universities? A. Well, I don't know it, but I had it on hearsay.

Q. Well, you have investigated at least two of them,—you know that Negroes are admitted in Iowa and Illinois. A. I have had it told to me. I have not applied there.

Q. And you know by inquiring they are admitted in Kansas and Nebraska,—universities. A. Yes.

Q. You know that all those law schools receive students who are non-residents of those respective states,—you know that, don't you? A. Yes, sir.

Q. At page 69 of your deposition, do you recall my asking you if a good law school were established at Lincoln University, one that would be on a par with that at Missouri University, whether you would attend it, and you refused to answer,—didn't you? A. Yes, sir.

Mr. Redmond: I would like for the record to show that he was instructed not to answer the question because it was a waste of time to answer to something that did not exist, and until they have one he does not know what he would do.

Mr. Hogsett: He says he would refuse to answer it.

Mr. Redmond: Would you read the deposition on that particular point?

Mr. Hogsett: Yes, sir. (Reading) "Question: Now, taking those up one at a time, your first reason was that there is no law school in Lincoln University,—that is true at this time. If there

was a law school in Lincoln University, would you then prefer to go there? Mr. Redmond: I want to object to that, and instruct him not to answer; there is no law school at Lincoln University, and it is a waste of time in dealing with what he would do if something would happen.

Mr. Hogsett: You refuse to answer the question, do you? Answer: Yes. Mr. Redmond:

For the reason there is no telling what kind of a law school would be there,—it might be an inferior law school. Mr. Hogsett: Assuming it was a good one?

Mr. Redmond: I want to say that I object to that question because it is based on something that does not exist. Mr. Hogsett:

I am asking the question and the witness can answer it or not, as he pleases. Mr. Redmond: I

am going to instruct him not to answer it. Answer: I decline on advice of counsel."—That is your evidence, is it? A. Yes, sir.

Q. And that is still your position, isn't it; or isn't it?

Mr. Redmond: The way for him to find out is to ask the question, and we can make our objection and Your Honor can rule on it.

The Court: Objection sustained.

Mr. Hogsett: All right: Now in regard to this matter of travel,—you say, living in St. Louis, that you would have to travel further to get to Iowa City, Champaign, Illinois; Lincoln, Nebraska; or Lawrence, Kansas;—and that is true,—but do you not know that there are many towns in the state of Missouri where the distance to Columbia is further and the expense of reaching Columbia

is greater than it would be for you to go from St. Louis to these other towns in foreign states?

Mr. Redmond: We object to that. That has no bearing on the case, and is immaterial.

The Court: I can't tell about that. If he knows, he may answer.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

The Witness: A. I would like to say yes, and qualify that.

Mr. Hogsett: Q. Go ahead. A. Although some students attending Missouri University may have to travel further than I would have to travel to go out of state, they are not compelled to travel that distance, are they? At least, they can cross the border and enter a college that is nearer to them than Columbia, Missouri, is.

Q. I am not asking you to argue it, but I am asking for the fact,—if you don't know that white students living in Missouri may travel and do travel further to get to Columbia than you would travel to go from St. Louis to these adjacent states.

Mr. Houston: Counsel has been arguing with the witness all along. It is unfair to argue with the witness and then tell the witness he can't argue back.

The Court: Well, don't comment one way or the other. Ask the question, and let him answer.

The Witness: A. Yes, sir.

Mr. Hogsett: Q. You know you are eligible from a scholastic standpoint and otherwise



to enter the Law School of Kansas, Iowa, Nebraska or Illinois? A. Yes, sir.

Q. And you know those states are— A. Yes, sir.

Q. Adjacent to Missouri? A. Yes, sir.

*Re-direct Examination of Lloyd L. Gaines by  
Mr. Redmond*

Mr. Redmond: Q. Mr. Gaines, did you believe that Negroes were barred from attending the Law School of the University of Missouri? A. No, sir; I did not.

(Witness excused.)

W. E. MASTERSON, having been duly produced, sworn and examined as a witness on the part of the relator, testified as follows, to-wit:

*Direct Examination of W. E. Masterson  
by Mr. Houston*

Q. Please state your full name. A. William Edward Masterson.

Q. Dean Masterson, your occupation is Dean of the School of Law of the University of Missouri,—that is right? A. Yes, sir.

Q. What is your legal training,—you graduated at the University of Texas, and did you take a doctorate? A. I took a Bachelor of Arts degree at the University of Texas; at Harvard University, Master of Arts, Bachelor of Laws, and Doctor of Juridical Science; and at University of London, Doctor of Laws.

Q. At Harvard University, Negroes were admitted? A. They were, in the Law School. I

can speak only of that, that is, when I was there.

Q. How long have you been at the University of Missouri? A. Two years.

Q. Two? A. Yes, sir.

Q. That is the only publicly supported Law School in the state of Missouri,—is that right?

A. I don't know that I can answer that question.

Q. How many law schools are there in the state of Missouri? A. I cannot answer that question.

Q. But this University of Missouri School of Law is a publicly supported law school, as a part of the University of Missouri,—is that right?

A. It is.

Q. A member of the Association of American Law Schools, and is on the approved list of the American Bar Association? A. It is.

Q. Tell us, will you please, some of the requirements that a law school has to meet in order to get into the Association. A. The students entering a member school must have at least two years of pre-legal work; that school must maintain a staff of instructors, of full-time instructors, at least four in number.

Q. It must have a library of 12,500? A. That is right. They must have a library,—is it ten thousand—

Q. It used to be ten. A. I believe that you are right. They must spend at least \$1,500 a year on the library of 10,000 over a period of five years.

Q. They must have the reports,—of its own

jurisdiction and at least half the states, with codes and statutes?

Mr. Hogsett: This is all interesting from the standpoint of criteria of membership in that organization but has no bearing on the issue here of whether the State of Missouri has denied to the relator the equal protection of the law.

The Court: I will let him answer.

The Witness: A. I cannot answer without refreshing my recollection.

Mr. Houston: Q. Well, assuming that it is true that a law school has to have four full time teachers, it has to have a plant, does it not, where those teachers may have studies and where they give instruction, accessible to the students, and the library must be suitably housed? A. If you mean a place to keep the books; yes, sir.

Q. And a place where the instructors may study and be available to students for advice,—that is the basis of full time teaching? A. I suppose so. Then the instructor should give his full time to that type of work.

Q. What is the budget of the University of Missouri Law School, per year? A. I should have to refresh my recollection on that. I can't answer your question.

Q. What will be necessary for you to refresh your recollection? A. I suppose access to the records in the Business Department of the University.

Q. Can you do that,—so we can excuse you and call you back, later? A. I suppose I can.

Mr. Houston: May we reserve further ques-

tioning on those specific points,—because, I can assure Your Honor, we are not taking up time but since the Dean was the expert, or should be so regarded, I thought we could best get the information from him.

The Court: You can recall him, if you want to.

Mr. Houston: Thank you. I would like to show you a catalogue, Dean Masterson, and ask you if this is the official catalogue of the University of Missouri? (Showing book to witness.)

A. Yes, I take it to be.

Q. Will you turn to the section on the Law School? A. Announcements for 1936-37. I have it.

Q. In there that says that the function of the Law School is to prepare—well, so far as you know, has there been any change in the statements in the catalogue?—because I haven't seen the latest one. A. Well, as far as I know,—there are probably some slight changes in the curriculum, but very slight and immaterial.

Q. But not in the ordinary explanatory statements? A. None.

Q. Turn to the point of "Aims of School." A. Yes, sir.

Q. (Reading) "The School of Law exists to serve the state and its bar." A. Yes, sir.

Q. (Reading) "The primary aim is to equip students for the practice of law." Then reading on down, (reading), "The School recognizes a duty to the state beyond the equipment and training of practitioners. Many of the University students



who do not intend to practice find its courses valuable training for citizenship, for business careers, and for the service of the public on Commissioners and in the Legislature. The School attempts to serve the bar of the state by the publication of the Law Series of the University of Missouri Bulletin, hereinafter described." A. You must be reading from an out-dated publication. Have you the 36-37 announcement there?

Q. I have not. A. Well, it should be "Law Review" and not "Law Series."

The Court: Why not introduce that in evidence?

Mr. Houston: We would like to introduce as Petitioner's Exhibit P the catalogue of the University of Missouri, Volume 37, Number 7,—the section dealing with the School of Law, pages 222 to 227.

The Court: Let it be admitted.

Said Relator's Exhibit P, pages 222 to 227, both inclusive, is in words and figures as follows, to-wit:

The portions of pages 222-227 of Relator's Exhibit P, so offered in evidence, are as follows:

The School of Law was organized in 1872. It has been a member of the Association of American Law Schools since the latter's organization, is on the list of law schools approved by the Council of the Section on Legal Education and Admission to the Bar of the American Bar Association, and is the only such school in the state outside of the City of St. Louis.

**LIBRARY:** The law library contains approximately 35,000 volumes, and includes both the original and the reprints of the English reports; the Irish, Scotch, and Canadian Reports; several sets of the reports of the Supreme Court of the United States; the reports of all of the Federal courts, all of the state reports, full sets of the National Reporter System; the necessary digests, and a valuable collection of statutes, sessions laws, standard treatises, legal periodicals, and encyclopedias.

The library is in charge of a trained librarian, and is open to students from 8 o'clock in the morning until 10 o'clock at night.

### AIMS OF SCHOOL

The School of Law exists to serve the state and its bar. The primary aim is to equip students for the practice of law. To this end, its methods conform to the most modern standards of legal education. Written examinations are given in all courses at the end of each course. Regular attendance is required at all class exercises.

The School of Law does not seek merely a large number of students, and the entrance requirements are such as to admit only those whose education and maturity fit them for serious study. Also, the School recognizes a duty to the state beyond the equipment and training of practitioners. Many of the University students who do not intend to practice find its courses valuable training for citizenship, for business careers, and for the service of the public on Commissions and

in the Legislature. The School attempts to serve the bar of the state by the publication of the Missouri Law Review, hereinafter described, and by preparing annotations to the Restatement of the Law by the American Law Institute as well as in other ways.

## ADMISSION

**PRELIMINARY TRAINING:** The requirements for admissions are the satisfactory completion of (1), a four-years' high school course, or its equivalent, and (2), the completion of one-half of the work, exclusive of correspondence work, acceptable for a Bachelor's degree granted, on the basis of a four-year period of study, by the University of Missouri or any college or university accredited therewith. The Association of American Law Schools, of which this Law School is a member, interprets this requirement to mean that a candidate shall present at least 60 semester hours (or their equivalent) of college work taken in an accredited school and exclusive of credits earned in such courses as non-theory courses in Military Science, Hygiene, Domestic Arts, Physical Education, Vocal or Instrumental Music.

## CURRICULUM—DEGREE

**Three-Year Curriculum:** The curriculum of the School of Law extends through three school years of two terms each. In order to be graduated, a student must have completed, with passing grade, seventy-nine (79) hours of law work. The

work of the students will normally be distributed as follows: Twenty-nine (29) hours in the first year, twenty-five (25) in the second, and twenty-five (25) in the third.

### MISSOURI LAW REVIEW

The School of Law publishes the Missouri Law Review, a new publication which supersedes the Law Series of the University of Missouri Bulletin. The purpose of this publication is to present to the Missouri Bar and the legal profession in general the results of legal study and research carried on at the School. The Review is edited by the faculty and a board of student editors chosen by the faculty from the members of the second and third-year classes. Student editors are chosen on the basis of legal scholarship. Election to the board is an honor, and a student editor has an unusual opportunity to gain experience in legal research, which better fits him for the practice of law.

Each number of the Review contains leading articles written by members of the faculty and others, and notes on recent Missouri cases and comments written by student editors under the direction of members of the faculty.

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Mr. Houston: Q. What is the proportion of Missouri students among the student body in the School of Law? A. I shall have to answer that approximately, and I only recall this,—that last year,—that is, the year before the academic year that has closed,—we had some 24 students from



other states, out of an enrollment of approximately 200. I haven't the figures for this year.

Q. So that the student body is predominantly made up of Missouri students? A. In that proportion I named, for the last year only.

Q. According to your knowledge, do the majority of students graduating from the University of Missouri settle in the state of Missouri, either for the practice of Law or other professions? A. I would say that the majority do, yes; but some of them go to other states for their practice.

Q. But the majority of them remain in Missouri? A. Probably they do, I would say; but I have no statistics on that.

Q. You are simply giving your general opinion? A. Yes.

Q. In view of that fact, in the School of Law you pay particular attention to Missouri decisions and Missouri law, do you not? A. We do not.

Q. The School publishes the Missouri Law Review, does it not? A. It does.

Q. What preceded the Missouri Law Review? A. The Missouri Law Bulletin, I think was its title.

Mr. Redmond: Law Series.

The Witness: A. Yes, Law Series.

Mr. Houston: Q. Does the same editorial policy run through the Missouri Law Review as through the Law Series, as to paying particular attention to the law of Missouri? A. I cannot say. I had nothing to do with the Missouri Law Series.

any particular reference to faculty action, I should say, but I am willing to say that the issues of the Series that were published while I was here, as I now recall it,—no, I can't say that,—we published three issues last year. Two of them, at least, have no articles on Missouri law. The third one, I don't recall its content. I don't know whether there was a leading article on Missouri law or not, but two of them had no leading articles on Missouri law.

Q. You are not talking about the year just closed? A. No, the one before the one just closed. These (indicating Law Reviews) came into being this year.

Q. But they do have recent cases, comments and notes in recent cases? A. Some Missouri cases, and some not Missouri cases.

Q. I ask you to look at the notes and case comments in the Missouri Law Review and tell us how many of these comments or notes there are not on Missouri cases or on cases of the United States Supreme Court. A. I will have to go through here (looking through Law Review). First, here is a comment which has nothing to do with Missouri Law,—“Constitutional Law—Regulation of the Price of Milk in Interstate Commerce.”

Q. That is United States Supreme Court, New York milk case? A. Yes, sir, right. The second case comment, beginning at page 68, has nothing to do with Missouri law,—“Constitutional Law—Delegation of Legislative Authority,”—a general constitutional law problem dealing with

the decisions of the Supreme Court of the United States.

The Court: Are you offering these Law Reviews in evidence?

Mr. Houston: Yes, I am going to offer them in evidence.

The Court: Well, offer the Reviews,—it is all before the Court.

Mr. Houston: Well, let me offer them in evidence and the Court will analyze them.

Mr. Hogsett: No objection.

Mr. Houston: We offer the Missouri Law Review, Volume One, Number One, as Relator's Exhibit R. And Volume No. Two as Relator's Exhibit S. If counsel will, at recess, go over them with us—

Mr. Hogsett: I am glad to co-operate with counsel to reduce the size of the record, but I will not, myself, have time to do that. If he will do that with some representative of Dean Masterson, that will be satisfactory,—during the lunch hour.

Mr. Houston: That is all right.

Mr. Houston: Q. Now tell us about the student editors of the Missouri Law Review, who the announcement says, are chosen on the basis of scholarship. A. Tell you about them?

Q. How are they chosen? A. The highest ranking men from the second and third year classes are chosen. We chose, this year, from those two classes seventeen students because they had the highest ranks in those two classes,—those two classes consisted of some 110 or 112 men. Seventeen of them were chosen, approximately

eight from either class. I would have to check that. If you want that information, I can give it to you.

Q. No. A. Well, it is purely on the basis of scholarship.

Q. A student of the School of Law of the University of Missouri, on the basis of high scholarship, does have a chance to do editorial work, if selected by the faculty on the basis of his scholarship? A. Yes, he writes case notes and comments.

Q. If the statement is true in the 1935 catalogue to the effect that "each number of the Series contains at least one leading article on some phase of Missouri law written by a member of the faculty, and notes on recent Missouri cases, written by student editors under the direction of a member of the faculty"—at least those students who are on the Missouri Law Review do get special work in Missouri law,—is that right? A. It does not follow at all that they have to or that they will. A student can select the case from any jurisdiction he wants, and write his note or comment under that case.

Q. But if the statement in the catalogue is true, that it contains notes on recent Missouri cases written by student editors, the student writing notes on the Missouri cases gets the benefit of special research and coaching and consultation with the faculty on the Missouri law? A. If he is writing on Missouri law he will have to make some study of Missouri law, but it does not follow that each student is confined to Missouri law. Very



frequently, in writing, a student in preparing a note on a Missouri case will tell you more about the law of other jurisdictions than he will tell you about the law of Missouri.

Q. Would the student get special work in that regard? A. His analysis is individual to that case; yes, sir.

Q. Then the students do get special work in Missouri law?

Mr. Hogsett: We object to that as repetition.

The Court: Let him answer. I am disposed to make this record full. Proceed.

The witness: A. I can only answer your question as to what he does, and whether he gets special training in that work in Missouri law is a matter of interpretation.

Mr. Houston: Q. I hand you here Volume one, Number One, of the Missouri Law Review and ask you to look at the recent cases and see if there is not quite a thorough analysis in foot notes and citations of Missouri cases,—in the several foot notes?

(Counsel indicating page 78 to witness.)

Mr. Hogsett: That is in evidence and speaks for itself.

The Court: Yes.

To which ruling of the Court the Relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: Q. That note was prepared by a student editor so far as you know, was it not?

A. Here are references to a Pennsylvania case, Iowa, Illinois, A. L. R.—

Q. Well, not to interrupt you,—we understand that in writing a case note you cite laws of other jurisdictions, but the question is as to the amount of Missouri citations. You say "the School attempts to serve the bar of the state by the publication of the Law Series of the University of Missouri Bulletin, hereinafter described" in your announcement for 1935-1936. You say here in the 1936-1937 catalogue that "the School attempts to serve the bar of the state by the publication of the Missouri Law Review, hereinafter described, and by preparing annotations to the Restatement of the law by the American Law Institute, as well as in other ways." In preparing the annotations to the Restatement of the law, you are preparing Missouri annotations, are you not?

A. That is right.

Q. That is a special service of the University of Missouri Law School for the Missouri bar?

A. It is primarily for the Missouri bar, but those annotations have a wide distribution throughout the country.

Q. But it is primarily for the Missouri bar?

A. That is right.

Q. And therefore the statement that "the School attempts to serve the bar of the state by the publication of the Missouri Law Review" requires you to pay special attention to Missouri law?

A. No, that statement means we expect most of our subscribers to come from the Missouri bar. The leading articles are read and commented on by lawyers and Professors of Law throughout the country.

Q. Now let us go into the distribution of your student body. You take students from other states? A. Yes, sir.

Q. White students from other states? A. Yes, sir.

Q. Do you admit foreign students? A. I think so. We have none in the Law School, but I think we admit foreign students. I don't know why we do not,—but you will have to get that information from the Registrar. He has to do with admission in the Law School altogether.

Q. You don't raise any question as to how far they have to come from their home to the School of Law at the University of Missouri?

A. The Registrar has exclusive jurisdiction in that matter. I have nothing to do with it.

Q. Do you know whether there is any rule which attempts to determine how far a student has to come in trying to matriculate in the School of Law at the University of Missouri. A. I know of no such rule at all.

Q. Do you know of any other publicly supported Law School in Missouri? A. Well, I don't know of any.

Q. Two other questions: The work which you are doing, which the University of Missouri School of Law is doing, in making the annotations to the Restatement of the law,—the annotations on Missouri cases are not being duplicated anywhere else in the country? A. I would be surprised if it is.

Q. To the best of your knowledge, your

answer is "No"? A. Yes,—but I have no knowledge on the subject, as a matter of fact.

Q. You have a familiarity with current legal periodicals? A. Yes, sir.

Q. Do you know of any other periodical which contains as many cases on Missouri law as the Missouri Law Review, or Law Bulletin? A. I haven't examined it with special reference to that subject, and I can't answer that, but—I can't answer that question.

*Cross Examination of W. E. Masterson*

Mr. Hogsett: Q. The work of preparing annotations to the Restatement of the law by the American Law Institute is not done by students, is it? A. It is not. It is done by the faculty.

Q. They haven't a thing to do with it? A. No, except the faculty may call in student help and pay on an hourly basis. But that is purely mechanical help.

Q. If Mr. Gaines were a Freshman law student he would not be eligible for the Law Review board because only men from the second and third year classes are eligible? A. He would not be eligible until at the beginning of the second year.

Q. And it is speculative as to whether he or any other student would ever make the grade to qualify for work on the Missouri Law Review? A. That is right.

Q. Copies of the Missouri Law Review are sent all over the country? A. Yes, sir.

Q. To the Law Schools of Iowa, Kansas, Illinois and Nebraska? A. Yes, sir.

Q. And they are available for use there by



anybody who wants to see them? A. That is right.

Q. Each of those schools,—Kansas, Illinois, Iowa and Nebraska,—has a Law Review, and students on the basis of scholarship are eligible to work on those? A. Iowa, Nebraska and Illinois have Law Reviews but I don't think Kansas has. I would have to refresh my recollection to make sure of that,—as to Kansas having a Review,—but I don't think they have.

Q. Mr. Houston asked you whether Missouri University specializes in Missouri law and procedure, and you answered that it did not. What is the fact with respect to the type of education given by the University of Missouri Law School? A. We teach the general common law system as practiced throughout the United States.

Q. Is the Missouri Law School in any sense a provincial Law School, adapted primarily to educate lawyers who will practice only in this state? A. It is not.

Q. Is it not the aim of the school, as well as other modern law schools, to give work or education in the law which will give the student a basis for the practice of Law in any other state where the Anglo-American system of law obtains? A. It is.

Q. The case book system is used at Illinois, Nebraska, Kansas, Iowa and Missouri? A. That is right.

Q. The case books which the students study in those five schools are largely the same? A. Yes, sir.

Q. Have you at our request made a tabulation, showing as to each case book used in the Missouri Law School in all three years, the total number of cases included, and the total number of Missouri cases included? A. I have.

Q. I hand you these three tabulations and you may for the present purpose ignore the adding machine slips attached, and ask you to state whether they are the tabulations you have last referred to? A. Yes, sir, that is right.

Mr. Hogsett: I ask the Reporter to mark them as Exhibits, and I offer them in evidence.

NOTE: Said tabulations were marked as Respondents' Exhibits One, Two, and Three, respectively.

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Said Exhibits 1, 2 and 3, respectively, are in words and figures as follows, to-wit:

(Exhibits omitted by agreement as material is covered in summaries.)

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Mr. Hogsett: Q. Do these three tabulations include every case book used in the Missouri Law School in any year? A. They do.

Q. They are complete, then? A. They are.

Mr. Hogsett: Without taking time to read those, I have had prepared a summary of those, which I now offer in evidence, and they are subject to counsel's examination,—we know they are correct.

The Court: Do you accept that?

Mr. Redmond: Yes.

The Court: Let them be admitted.

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NOTE: Same were marked by the Reporter as Respondents' Exhibit 4, 5 and 6, respectively; were read to the Court by Mr. Hogsett, and are in words and figures as follows, to-wit:

### RESPONDENTS' EXHIBIT 4

Summary of all cases, and cases from Missouri, in the casebooks used in the first year at the University of Missouri Law School.

COURSES	TOTAL CASES	MISSOURI CASES
Contracts	433	2
Torts	485	3
Equity I	347	2
Real Property I	293	5
Personal Property	202	3
Pleading and Practice	223	5
Criminal Law	300	11
	<hr/> 2283	<hr/> 31

13% of all cases  
are from Missouri.

### RESPONDENTS' EXHIBIT 5

Summary of all cases, and cases from Missouri, in the casebooks used in the Second year at the University of Missouri Law School.

COURSES	TOTAL CASES	MISSOURI CASES
Equity II	327	2
Equity III	251	3
Evidence	330	5
Sales	416	3
Insurance	218	1

Property II	215	0
Bills and Notes	239	3
Code Pleading	330	18
Wills	184	3
	<hr/>	<hr/>
	2510	38

1.5% of all cases  
are from Missouri.

### RESPONDENTS' EXHIBIT 6

Summary of all cases, and cases from Missouri, in the casebooks used in the third year at the University of Missouri Law School.

COURSES	TOTAL CASES	MISSOURI CASES
Business Organization	300	4
Trial Practice	372	13
Trusts	298	0
Conflicts	322	7
Administrative Law	92	0
Taxation	155	1
Constitutional Law	290	0
Federal Procedure	143	0
Creditors Rights	211	3
	<hr/>	<hr/>
	2173	28

1.2% of all cases  
are from Missouri.



## TOTAL OF THREE YEARS

YEAR	TOTAL CASES	MISSOURI CASES
1st year	2283	31
2nd year	2510	38
3rd year	2173	28
	—	—
	6966	97

1.2% of all cases  
are from Missouri.

Mr. Hogsett: Q. Now explain the case book system, for the record. A. The case book system is a study of the cases which are brought together in a volume for each course. For example, in the course, we will say in "Contracts" there is a case book on contracts and in that book are brought together cases from various jurisdictions and the instructor and the student work through that book and study and discuss those cases. The student abstracts the case, is called upon to state the case to the instructor, and recite, and there is a recitation between him and the instructor on that case.

Q. Is that same system employed in these other four adjacent Law Schools? A. It is.

Q. Do you know the standing of the Law Schools of Kansas, Nebraska, Iowa and Illinois Universities? A. I do.

Q. What is it? A. Very good.

Q. Are they all members of the Association of American Law Schools and on the approved list of the American Bar Association? A. They are.

Q. Is it a matter of frequent or infrequent occurrence for students to transfer during their Law course between Missouri Law School and other law schools, including Kansas, Nebraska, Iowa and Illinois? A. That frequently happens.

Q. In those cases, does the student lose any time or does he receive full credit for the work done and move along without losing stride? A. He receives full credit for the work done. He moves right along without any *hiatus*.

*Re-direct Examination of W. E. Masterson*

Mr. Houston: In dealing with a case book, it is true that you can't tell anything about specialties in Law, by looking at a book as to how much state tone the school carries.

A. I don't know what you mean.

Q. From your experience at Harvard, and from your experience in teaching, you know that the fact two men use the same book,—in different jurisdictions does not answer the question of whether either of them specializes, or does not, in state law? A. It does if he uses the case book.

Q. It does not answer the question as to whether in the instruction of the student he correlates the state law? A. It does not.

Q. It does not answer the question of whether the mere naming of the case book,—as to whether the instructor specializes in the state law or not?

Mr. Hogsett: We object to his arguing with the witness.

The Court: Let him answer.

Mr. Houston: Q. Let me straighten the question out. An instructor at the University of Missouri School of Law can take the same case book that would be used at Chicago and still specialize on Missouri law by relating to each case in the case book any Missouri decisions and Missouri statutes?

A. That would not be specializing on Missouri law, but incidentally to bring in a Missouri case in connection with the general principle of the law.

Q. But in using the same case book that is being used at Chicago he could exhaust the Missouri law on that subject? A. Certainly, he could,—he could abandon cases if he wanted to. He is the master of his course.

Q. The mere fact that the same case book is used in Kansas, Illinois, and Iowa, as well as in the University of Missouri, does not answer the question as to whether Missouri U. does or does not specialize in Missouri law? A. Except that I must qualify that by saying that the cases in the book constitute the great body of instruction and discussion from day to day.

Q. That is not so as to each teacher, is it? A. I would be disappointed if I had a member of my faculty with reference to whom it were not so. My point is that it weakens any Law School to specialize in local law.

Q. Do you know there are state law schools and general law schools,—you would not call the Missouri Law School a general law school in the sense that Columbia and Northwestern and Har-

vard are, would you, in view of the great predominance of Missouri students who are going to settle in Missouri? A. We use the same cases for the basis of discussion as in the other schools you mention.

Q. Would you not say that more attention would be paid to Missouri law as far as student instruction is concerned? I am not talking about instructors' research but about instruction. Reviewing your own course at Harvard, in your undergraduate course at Harvard, wouldn't you say that there was more student instruction given to the students of Missouri University in Missouri law than was given to you at Harvard, in Missouri law? A. That is not true in the courses I teach. I can't speak for absolutely every instructor.

Q. Now when you spoke about the annotations for the Restatement of the American Law Institute, and the fact that, as you said, the faculty was making the Missouri annotations,—the students, of course, get the benefit of the faculty research in their instruction, do they not? A. In what way?

Q. Well, in advising them as to what the Missouri law is and relating it to the Restatement. A. That leads back to the question you are asking,—about how much Missouri law we are teaching,—and the Restatement has no relation to that.

Q. They get the benefit of the research on the annotations? A. In what way? I must be specific. How do they get the benefit of it?



Q. By having pointed out to them at any time where the Missouri law, either statutory or decisions, would either vary from the Restatement or support it, or vary from the general weight of authority or from the case in the case book. A. That would not be any more than mentioning some cases in other jurisdictions.

Q. But he would give the student the benefit of his Missouri research? A. But I would have to know how.

Q. Do you mean that the teacher does not give the student the benefit of his research in his teaching? A. Of course he does, but that leads back to the question you asked a while ago,—how much Missouri law does he teach? The fact that he is doing research in annotations does not mean he will do work in Missouri law in his teaching.

Q. Gaines would not have a chance,—assuming he could be a member of the student body of the University of Missouri, in his first year, to work on the Law Review, but he would have an equal chance with anybody else according to his scholarship? A. On the Law Review?

Q. Yes. A. Yes.

Mr. Houston: That is all.

#### *Recross Examination of W. E. Masterson*

Mr. Hogsett: Q. Just one more question, on this: Some of the best lawyers we have in this state are graduates of schools out of the state is that not true? A. Oh, yes.

Q. In your opinion as an educator, can a student, desiring to practice law in Missouri, as

many lawyers from out of the state do, get as sound, comprehensive, valuable legal education in the law schools of the universities of Kansas, Nebraska, Iowa, and Illinois, as in the University of Missouri. A. Yes, I would think so.

Q. So far as the value to the student is concerned, the Law School does not have to be a member of the Association of the American Law Schools, or on the approved list of the American Bar Association, does it, so far as value to the student is concerned? A. That is true.

Q. The thing that is important to the law student is that he be qualified to pass the bar examination, or to take it? A. Proper instruction in the law, plus the equipment for the bar examination; yes, sir.

*Re-direct Examination of W. E. Masterson*

Mr. Houston: Q. As a matter of fact, the Association of American Law Schools discountenances the prepping of law students for the bar examination, is that not true? That is not the purpose of Law School? A. As a policy, we do not aim to prepare for a bar examination,—that is right. I should say the general aim is to lay a thorough basis for the practice of law.

Q. By taking this as a theoretical question only,—although there is that similarity between the systems of Law of every American jurisdiction whereby a student can go to a first rate law school in one state, and, with extra preparation as to the state where he wants to practice, prepare himself to practice in that state,—nevertheless, he

would have an advantage if in the three years' course of study in that law school he was being made familiar constantly or continually with the peculiarities of the law of the state in which he wants to practice? A. I don't know that that would be the case at all. If he was being constantly familiarized with the local law of the state, the major purpose of instruction in the law school would be very restricted and he would lose in that respect.

Q. Have you ever practiced law, sir? A. Yes.

Q. In Missouri? A. No, not in Missouri. (Witness excused.)

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The Court: Well, Gentlemen, it is 10 minutes to 12, and if we put another witness on the stand we would have to adjourn in the middle. We will take a recess to 1:15.

. . . . .

NOTE: And now a recess was taken for the noon hour. Court reconvened at 1:15 P. M. of the same day, all present as before, at which time the following proceedings were had herein, to-wit:

The relator called as a witness S. WOODSON CANADA, who, being duly produced, sworn and examined, testified as follows, to-wit:

*Direct Examination of S. Woodson Canada*

Mr. Houston: Q. Mr. Canada, state your full name, please. A. Silas Woodson Canada.

Q. You are the Registrar of the University of Missouri? A. Yes, sir.

Q. How long have you been in that position?  
A. About 13 years.

Q. Is the University School of Law the only publicly supported law school in the state of Missouri? A. I believe it is, sir.

Q. In the admission of students you make no geographical distinction as to where the student comes from, is that correct? A. That is correct.

Q. You admit white students from other states? A. Yes, sir.

Q. Do you admit foreign students? A. Yes, sir.

Q. Do you allow the admission of such students to the entire University? A. Yes, sir.

Q. Do you admit Chinese students? A. To the University, yes, sir.

Q. Japanese students? A. Yes, sir.

Q. Hindu students? A. Yes, sir.

Q. The only students you bar would be students of African descent, is that right? A. Other things being equal, I think so, yes, sir.

Q. That is regardless of whether they are native or non-natives of Missouri? A. Yes, sir.

Q. Now these foreign students,—you don't raise any question about whether they are going to locate in Missouri after they receive the benefit of instruction in the University of Missouri, or immediately going back home? A. No, sir.

Q. Does the tuition of the foreign students pay the whole cost of instruction? A. I don't know.

Q. Do you understand what I mean by the



question? A. I think I understand the question.

Q. But the answer is that you don't know.

A. I don't know.

*Cross Examination of S. Woodson Canada*

Mr. Hogsett: Q. And the reason, Mr. Canada, that persons of African descent are not admitted into Missouri University is because, you understand, the state of Missouri has provided other facilities for their education? A. Yes, sir.

(Witness excused.)

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And the relator called as a witness T. D. STANFORD, who, being duly produced, sworn and examined, testified as follows, to-wit:

*Direct Examination of T. D. Stanford*

Mr. Houston: Q. Your full name? A. Tony David Stanford.

Q. You are Assistant Secretary of the University of Missouri? A. Yes, sir.

Q. As such, do you have dealings with the fiscal management of the University? A. Yes, sir.

Q. Do you know anything about the per capita cost of instruction in the different schools? A. I do not.

Q. That does not come under your jurisdiction? A. No, sir.

Q. You have presented here certain facts for the budget of the School of Law,—do these fig-

ures represent the budget or actual expenditures?

A. For the year 1935, it represents actual expenditures.

Q. Can you break that down so as to show the amount of money received from the State and amounts received by tuition? A. I cannot at this time.

Q. Can you do that? A. Yes, it might be broken down.

Q. Will you also indicate the excess that the State has to put up, over the tuition paid by the student? A. I would not be able to do that.

Q. Would you be able to get those figures from the files? A. I can only show what part of this expense was paid either from the general funds of the University or paid from state appropriations.

Q. And what part was paid by tuition? A. Well, "general funds" paid by the University come from tuition funds paid and other sources.

Q. Would you be able to show that as far as the other schools are concerned? A. You mean, the amounts expended either from the state or general University funds?

Q. The proportion. A. I presume it could be done.

Mr. Houston: May it be understood that he can do that later and file it as a memorandum?

The Witness: I am sorry, but I am unable to give an approximate figure as to the tuition paid and state appropriation for any school, from the general fund.

Mr. Murray: Q. Could you do that for the entire University? A. No.

Mr. Houston: Q. Could you prepare that in the afternoon? A. I am afraid not.

Q. Is there anyone else on whom it would not be very much of a burden— A. It would necessitate anyone spending considerable time to give it such a breakdown.

Q. Even an approximation?

Mr. Hogsett: If he is going to do it, it should be done exactly.

Mr. Houston: Can it be filed later subject to any objection?

Mr. Hogsett: Would this serve counsel's purpose,—let the witness take his leisure and supplement the memorandum or tabulation he has prepared, with the information that counsel now seeks; let it be considered as presented now even though it is done a week from now,—let it be offered in evidence now?

Mr. Houston: That is perfectly satisfactory. I want to show that the State of Missouri has to contribute to the expense of the instruction of foreign students,—that the amount of money that foreign students pay does not cover the full cost of their instruction.

Mr. Hogsett: Of course we say that is wholly irrelevant, but, nevertheless let him prove that.

Mr. Houston: Thank you.

(Witness excused.)

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Mr. Houston: I suggest we give Mr. Stanford's memorandum an exhibit number.

Mr. Hogsett: Let the Reporter have it, and designate it later.

Reporter's Note: Said document later furnished by the witness Stanford to the Reporter is marked Relator's Exhibit T, and is in words and figures as follows:

### RELATOR'S EXHIBIT T

#### UNIVERSITY OF MISSOURI SCHOOL OF LAW

BUDGET July 10, 1936

#### TOTAL EXPENDED 1935 AND TOTAL

#### ALLOTTED 1936

	Expended 1935	Allotted 1936	Total
Law Salaries	\$34,033.36	\$34,646.67	\$68,680.03
Law Expense and Equip.	600.78	600.00	1,200.78
Mo. Law Review	.....	500.00	500.00
Law Library Salaries	2,216.64	2,400.00	4,616.64
Law Library Exp. & Equip.	2,642.50	2,757.50	5,400.00
Total	\$39,493.28	\$40,904.17	\$80,397.45

#### EXPENDED FROM STATE APPROPRIATIONS 1935 AND TO JULY, 1936

	Total Expended 1935	Expended to July, 1936	Total
Law Salaries	\$24,569.68	\$18,927.36	\$43,497.04
Law Expense			



and Equip.	435.49	154.57	590.06
Mo. Law Review	.....	.....	.....
Law Library			
Salaries	1,616.64	1,200.00	2,816.64
Law Library			
Exp. & Equip.	191.29	1,055.13	1,246.42
Total	\$26,813.10	\$21,337.06	\$48,150.16

**EXPENDED FROM OTHER UNIVERSITY  
FUNDS 1935 AND TO JULY, 1936**

	Total Expended 1935	Expended to July, 1936	Total
Law Salaries	\$ 9,463.68	.....	\$ 9,463.68
Law Expense			
and Equip.	165.29	64.80	230.09
Mo. Law Review	.....	500.00	500.00
Law Library			
Salaries	600.00	.....	600.00
Law Library			
Exp. & Equip.	2,451.21	522.27	2,973.48
Total	\$12,680.18	\$11,087.07	\$13,767.25

And the relator called as a witness ROBERT L. WITHERSPOON, who, being duly produced, sworn and examined, testified as follows, to-wit:

*Direct Examination of Robert L. Witherspoon*

Mr. Houston: Q. State your full name. A. Robert L. Witherspoon.

Q. Your business? A. Attorney at Law.

Q. Location? A. In St. Louis, Missouri.

Q. How long have you been practicing? A. About 6 years.

Q. Where did you graduate? A. Howard University, in Washington, D. C.

Q. Do you hold any position in any association of lawyers? A. I do.

Q. And that is what? A. President of the Mound City Bar Association.

Q. What is the Mound City Bar Association?

A. That is an association composed of Negro lawyers of the City of St. Louis and vicinity.

Q. From your work as President of the Mound City Bar Association and your general association in Missouri, can you state approximately how many Negro lawyers there are in the state of Missouri? A. There are approximately 45.

Q. Distributed how? A. We have about 30 in St. Louis, 1 in Jefferson City, and the others are in Kansas City, Missouri.

Q. Are they recent accessions to the bar, or are most of them old practitioners? A. Most of them are all old practitioners.

Q. How many Negro lawyers have come into the bar of Missouri within your knowledge, say within the past five years? A. About 3.

Q. Going back to your law school,—was there any particular concentration in the distribution of students at Howard University,—did those students come mostly from one jurisdiction or several? A. From several jurisdictions.

Q. Was there any particular attention paid to the law of a special jurisdiction in your instruction there? A. No.

Q. When you decided to come out to the state of Missouri to practice, were you able to—were you prepared for the bar examination and practice first on the basis of the instruction received?

Mr. Hogsett: We object to that as wholly irrelevant. It has not a thing in the world to do with this case.

Mr. Houston: It was opened up by your own cross examination of Dean Masterson.

The Court: I think it is irrelevant, but I will let him answer.

(Question read, by request of witness.)

The Witness: A. I would say, no.

Mr. Houston: Q. What did you have to do?  
A. I had to do some special study on the Missouri law and Missouri procedure, and see how the Missouri law worked out with the general law that I had been taught in school.

Q. If you had gone to a school where you were being brought into contact with Missouri law during that three years that you were a law student, would that have been an advantage or not?

Mr. Cave: Just a moment, please,—

The Court: Yes, I think I will have to sustain an objection to that. Objection sustained.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: Q. In coming to the bar of the State of Missouri, did you find any handicap in comparison with the lawyers who had been

trained locally,—say at the University of Missouri?

Mr. Hogsett: We object to that as wholly irrelevant.

The Court: I will let him answer.

The Witness: A. Yes, I did.

Mr. Houston: Your witness.

Mr. Hogsett: No questions.

(Witness excused.)

And the relator called as a witness J. D. ELLIFF, who, being duly produced, sworn and examined, testified as follows:

*Direct Examination of J. D. Elliff*

Mr. Houston: Q. Your full name, please?

A. Joseph Dollivar Elliff.

Q. Your address? A. 705 Maryland Place, Columbia.

Q. Dr. Elliff, you are a member of the Board of Curators of Lincoln University, are you not? A. Yes, sir.

Q. And President of the Board? A. Yes, sir.

Q. Are you acquainted with the fact that plaintiff here, Lloyd L. Gaines, has made application for admission to the School of Law of the University of Missouri? A. Yes, sir.

Q. When was this matter first brought to your attention? A. I saw it in the public press,—I can't tell you the date.

Q. Did there come a time when you had a conference with any of the officials of the University of Missouri on the case? A. No, not.



specifically on that case.

Q. May I show you this telegram? (Showing witness telegram, Relator's Exhibit I). A. (Witness looking at same) What do you want me to say about this?

Q. The only thing I am asking about that is,—did you at the date of that telegram, which I think is September 18th,—had the case been brought to your attention at that time? A. I don't know. I think not, but I am not sure.

Q. In the fall of 1935, did you have occasion as a member of the Board of Curators of Lincoln University to consider this case and the general matter of the possibility of a legal education of Negroes in the state of Missouri? A. No.

Q. How long have you been a member of the Board of Curators of Lincoln University? A. Almost 6 years, I think,—more than five.

Q. In those six years, has Lincoln University offered anything more than undergraduate collegiate instruction? A. No.

Q. Doctor, at the time you went to the Board of Curators of Lincoln University, was Lincoln University at that time an accredited institution? A. No.

Q. It has since become accredited? A. It has.

Q. Were you on the Board at the time the Hackmann case was decided? A. Which case?

Q. Lincoln University against Hackmann, where the Lincoln University brought a mandamus against the State Auditor to get him to honor a requisition for the fees of an architect where the Board of Curators of Lincoln University had attempted to develop an expansion program in

1921,—are you familiar with that case? A. No.

Q. As a member of the Board of Curators of Lincoln University, have you had up for consideration the question of the expansion of Lincoln University? A. Yes, sir.

Q. In considering the expansion of Lincoln University, you have considered the question of public need, have you not? A. In some measure. We consider that definitely now.

Q. As the public need appears to shape up, have you any program projected for the expansion of Lincoln University? A. No definite program,—I would like to qualify that. At the present time we are making a very careful survey of Negro education in Missouri to determine what Lincoln University should do for its people, that it is not now doing; and on the basis of that we shall formulate a definite program of expansion.

Q. At the present time there is no such program? A. No.

Q. At the present time, have you any money available for a program of expansion?

Mr. Cave: If the Court please, we object to that as calling for a conclusion. I think the Chairman of the Board should be required to give the money on hand at this particular time, which money is appropriated by the legislature for certain purposes, untagged, which they may use for various purposes.

The Court: That is a direct question, I will let him answer.

\*The Witness: Will you ask that question again?

(Question read by the Reporter upon request.)

The Witness: A. I can't answer that, in a way, but the real answer is that our present appropriations of funds are all hypothecated to run the institution as it now stands for the remainder of the biennium.

Mr. Houston: Q. Is the present plant of Lincoln University sufficient to take care of the demands made upon it by its Negro constituency for undergraduate training alone? A. Except in one particular. We will evidently have to turn away women this year for lack of accommodations and homes for them. We have not had to do it yet, but we certainly will have to do it this fall.

Q. Have you any money available to provide the additional dormitory equipment necessary to take care of these extra women? A. Not now.

Q. Do you have teachers there with academic titles such as "Professor," "Associate Professor," "Assistant Professor," the same as they have at the University of Missouri? A. Yes, sir.

Q. Can you state whether the Professors at Lincoln University get the salaries that the Professors get at the University of Missouri, in the same departments,—for the same grade?

Mr. Hogsett: We object to that as wholly immaterial.

The Court: Objection sustained.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: If permitted to make proof,

we would show that the salaries paid at Lincoln University are much less than the salaries paid in the same department, for similar grade, at the University of Missouri.

Mr. Hogsett: To which the respondents object for the same reasons asserted when the objection was sustained by the Court.

The Court: Objection sustained.

To which ruling of the court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: Q. Dr. Elliff, so far as your information is concerned, is any money available at the present time with which Lincoln University could inaugurate a law school?

Mr. Hogsett: We object to that for the same reason. The appropriation Acts of which the Court takes judicial notice will show the amount appropriated, and we will, as a part of our case, show the unexpended balances in each fund as of August 9, 1935, at the time the relator graduated; as of September 6, 1935, the date he applied for admission to Missouri University; and as of April 17, 1936, the date he brought this suit,—and when that proof is in the record the figures will speak for themselves.

The Court: Well, I will let him answer. Objection overruled.

(Question read by request of witness.)

The Witness: A. Do you mean by "the present time" today?

Mr. Houston: Q. Let us make it August, 1935. Let me rephrase the whole question: In



August, 1935, was there money available with which Lincoln University could inaugurate a law school without crippling the existing plant and situation of Lincoln University?

Mr. Hogsett: We object to that as calling for the conclusion of the witness.

The Court: Objection sustained.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: Q. In August, 1935, was there any money available for the Board of Curators of Lincoln University which was not allocated for the continuation of Lincoln University as it then stood and was operating, or else allocated to other specific purposes?

Mr. Hogsett: We object to that question for the reason that it is speculative and asks for the conclusion of the witness. Let us see where that leads. For the purpose of supporting this objection I will say to Your Honor that we will show by the records that Lincoln University was allotted several hundred thousand dollars at the session of 1935; that at the very time counsel speaks of, August 9, 1935, there was unexpended from those appropriations these funds: Salaries, \$138,684; Repairs, \$15,943; operation,—a very elastic term,—\$56,433; United States Government Fund, \$3,223; total \$214,213. Now he asks the witness, in the face of the fact that the figures will really tell, to make a rank speculation and conclusion. If what he wants is to show how much money they had, the figures will tell. That

is one objection. The second is this:—the question is in its nature hypothetical. "Would there have been enough money to establish a law school?" The undisputed proof is that nobody has ever asked Lincoln University to establish a law school, and this question is objectionable on that ground, also.

Mr. Houston: Of course the law does not require you to do a vain thing.

Mr. Hegsett: How did Gaines know it was "a vain thing?"

The Court: I am going to let him answer it. (Question read.)

Mr. Houston: Q. Was there any money available for Lincoln University, as the school was then operated, that was not allocated for specific purposes?

Mr. Cave: Same objection.

The Court: Overruled.

Mr. Cave: The appropriation will speak for itself. I don't know whether he means allocation by the Board of Curators. The appropriation bill would be the best evidence of that. Dr. Elliff can't give his opinion on whether it was or not,—or whether he is referring to the way it was allocated in the appropriation bill—

The Court: I am going to let him answer.

The Witness: A. Frankly, I do not know. I can't answer that question. Perhaps a careful inspection of the records of the Board at that time would enable me to form an answer but I can't answer it specifically.

Mr. Houston: Q. The money available to Lin-

coln University in 1935 was to last how long? A. Two years time, until the next General Assembly.

Q. Can you give any approximation of how much it costs to run Lincoln University for 1935 and '36? A. That is all a matter of record.

Q. Is that record here? A. No. It can be found in the record of the Board's proceedings. I can't remember dollars and cents when it runs up that high. We plan to use the appropriation.

Q. But did you not say at the outset of your testimony that there is no money available for expansion? A. Immediate expansion,—now!

Q. Yes. A. I think that is true.

Q. Does Lincoln University usually wind up with a deficit every two years? A. No, we will have a little deficit, but a very small one, on our Building Fund.

Q. On the matter of state scholarships to Negro students,—has the Board of Curators of Lincoln University handled the state scholarships up to the present time. A. No. That has been handled by a member of the Board and the State Superintendent of Public Schools.

Q. Did the Board authorize him to do that? A. No.

Q. At the present time the only way for Lincoln University to get money,—except for philanthropic grants, which are uncertain;—would be through student tuition and other income such as appropriations from the legislature? A. Not quite. We had \$50,000 from one of the Foundations and occasionally we get something,—\$5,000

from another, and gifts from Foundations and persons.

Q. Are they usually given for specific purposes? A. They are.

Q. Has any Foundation given you a gift for a law school? A. No.

Q. Has there been any appropriation made by the State of Missouri for a law school at the Lincoln University? A. Not as far as I know.

Mr. Hogsett: You mean, specifically for a law school?

Mr. Houston: Yes.

*Cross Examination of J. D. Elliff*

Mr. Hogsett: You speak of a small deficit in one fund,—the Building Fund. That is about \$3,000, isn't it,—which is trifling, comparatively speaking?

A. I might explain it.

Q. Go ahead. A. It is on our buildings. The General Assembly gave us money for two buildings and we contracted them within the appropriation, but because of increased costs and labor trouble, we had to increase the expenditures and we are running a little short.

Q. But you are running short only in that one fund? A. Yes, sir.

Q. And only to that extent? A. That is all.

Q. Now, Mr. Houston has asked you a good many questions about a law school in Lincoln University. You never have been asked by any Negro for a legal education in Lincoln University,



have you, or otherwise? A. Not to my knowledge.

Q. This relator has never asked Lincoln University,—its officers or Curators, or any representative,—for any such education? A. Not to my knowledge.

Q. Well, you would know it if he had? A. I think so.

Q. The state has always, since the institution and establishment of Lincoln University, given you substantially what you wanted, hasn't it? A. Since I have been connected with it.

Q. And that is, for six years? A. About 6 years,—five years to be more exact.

Q. During the time that you have been head of that institution, as President of its Board, the State has given your institution substantially every dollar you have asked,—is that right? A. That is approximately correct, except for one building. They have given us all we asked for, for maintenance.

Q. For maintenance and general funds, they have given you substantially everything you have asked? A. Yes, sir.

Q. You make up your budget, estimating what you will need for the biennial period and apportion it between maintenance, salaries, repairs, building funds, operations, and so forth, and in all instances except one in relation to a building, since you have been at the head of the institution, the legislature has given you substantially all that you have asked,—is that right? A. That is correct.

Q. Now under your administration the institution has grown, too, hasn't it? A. Yes, sir.

Q. Tell approximately what the value of the land, buildings and equipment of that institution was when you took hold of it.—and its value now.

A. I have the data in a folder back at my seat.

Q. Well, you gave this to me yesterday,—see if you verify it.

The Court: Unless there is objection.

Mr. Houston: That is all right.

Mr. Hogsett: Q. You told me yesterday that the value of the lands, buildings and equipment in 1930 was \$362,600; and that it has grown under your administration so that in 1936 it is \$868,854. Is that right? A. I think that is correct.

Q. Doctor, do you know of any other state in the Union that has established a separate university for the education of Negroes? A. No.

Q. So far as you know as an educator, is Missouri a pioneer in that field? A. In the sense of establishing a state university on the same legal basis as the white university in the state, the answer is "Yes."

*Re-direct Examination of J. D. Elliff*

Mr. Houston: Q. The "University" has not actually come into existence yet?

Mr. Hogsett: We object to that as calling for a conclusion.

Mr. Houston: Oh, no.

The Court: Let him answer. Go ahead and answer, Doctor.

The Witness: A. That involves a definition

of what a "university" is. I think that is perfectly safe. If I may, I want to state my position so the Court will see clearly. When I came on that Board the school was not accredited. We realized that obstruction to our work. Every member of the Board realized it and the first objective was to build up a four year standard college of Arts and Science. A university can be built around Arts and Science, and I think there is but one exception in the whole United States. That required considerable time and effort. That we have accomplished, and Lincoln University today has the basic foundation of a "university" in that respect. We have a faculty, equipment and buildings that rank A-1 as a College of Arts and Science, and the institution is now in a position to expand. We have students and all conditions are favorable, except the financial one. Lincoln is ready to go. As to the number of colleges it is not a—it is a university in the making. It is an embryo university.

Mr. Houston: Q. Financially,—you are not in a financial position now to expand, are you?

Mr. Hogsett: We object to repetition.

The Court: Yes, I think you have gone over that.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: Q. In considering the matter of expansion, have you any occasion to investigate the number of Negroes studying law in other state universities? A. We are doing that now

in a survey. We have no definite conclusion to report.

Q. How many are studying law? A. I do not know. I know the number studying in other states.

Q. That is what I mean. A. At the present time, there are no Negro students studying in the states of Illinois, Iowa or Nebraska. There is one at Kansas, at the present moment.

Mr. Hogsett: Q. You mean, non residents? A. I mean residents or any—the one in Kansas is a Missourian.

Mr. Honston: Q. In your plan for expansion, you would have to consider public need? A. Yes, sir.

Q. Would there be more demand for a graduate school of Arts and Science, as you have been able to determine from your knowledge of Missouri and other states, than a law school? A. I do not know. What views our Board would take on an expansion have not been definitely determined. But we are in a position to expand now; but what form it will take, I don't know. That depends on the result of our survey and the money we get from the state.

Q. If you were advised that there were only 30 Negro lawyers in the state of Missouri, and in the last five years only three Negroes have gone into the bar and that there are no Negroes at present registered in the law schools of Nebraska, Illinois and Iowa and just one in Kansas,—would that be sufficient evidence of continuity of demand to warrant asking the legislature for an appropriation for a law school?



Mr. Hogsett: We object to that as the wildest kind of speculation.

The Court: Objection sustained. I think we have gone pretty far afield now.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

(Witness excused.)

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Mr. Houston: That is the plaintiff's case.

And now E. F. Elliott was called as a witness by respondents, and was duly produced and sworn.

Mr. Houston: In saying that we rested, Your Honor will recall that before recess we were to go ahead and make the analysis of the Law Reviews,—I think that was to be put in later. They were not brought until the Court was ready to resume.

Mr. Hogsett: You want an agreement that that be done? We agree.

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REPORTER'S NOTE: At a subsequent date, to-wit, August 7th, 1936, counsel for relator, Mr. Houston, furnished to the reporter for inclusion in the Bill of Exceptions herein the following document,—which is made a part of the record herein,—to-wit:

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# LIST OF ARTICLES AND COMMENTS ON MISSOURI LAW IN THE MISSOURI LAW REVIEW

(Caption omitted)

This list is prepared according to agreement of counsel at the trial July 10 and order of court,

subject to examination and correction by counsel for respondents. It is submitted in substantiation of the contention of relator that special emphasis is placed on Missouri law and procedure at the School of Law of the University of Missouri.

Vol. 1, issue No. 1, January, 1936:

Leading articles three, including "The Liability of a possessor of land in Missouri to persons injured while on the land. Page 45.

Comments three, including comment on Williams v. St. Louis. Public Service Company, 73 S. W. (2d) 199 (Mo. 1934) p. 73 recent cases fourteen, including:

(1) Miller v. Richardson, 85 S. W. (2d) 41 (Mo. 1935) p. 78.

(2) Roehl v. Ralph, 84 S. W. (2d), 405 (Mo. 1935), p. 80.

(3) State v. Logan, Callaway County Circ. Ct. (Mo. 1935), p. 82.

(4) Wayland v. Pendleton, 85 S. W. (2d), 482 (Mo. 1935), p. 84.

(5) State v. Wright, 85 S. W. (2d), 7 (Mo. 1935), p. 87.

(6) Manville v. Manville, 81 S. W. (2d), 382 (Mo. 1935), p. 88.

(7) Pulitzer v. Chapman, 85 S. W. (2d), 400 (Mo. 1935), p. 89.

(8) McClellan v. Owens, 74 S. W. (2d), 570 (Mo. 1934), p. 90.

(9) Chambers v. Chambers, 74 S. W. (2d), 104 (Mo. 1934), p. 91.

(10) Corbett v. Milk Wagon Drivers Union, 84 S. W. (2d), 377 (Mo. App. 1935), p. 99.

(11) *Cooley v. Jasper County*, 85 S. W. (2d), 57 (1935) p. 101.

(12) *Mayfield v. Kansas City Southern Ry. Co.*, 85 S. W. (2d), 116 (Mo. 1935), p. 103.

Vol. 1, issue No. 2, April, 1936:

Leading articles, including "Rights of a Corporation in Missouri against promoters for Secret Profits" p. 161 comments two, including comment on Motion for New Trial in Criminal Procedure in Missouri, p. 175 on *State v. Williams*, 87 S. W. (2d) 175 (Mo. 1935) p. 181, recent cases twelve, including:

(1) *First Natl. Bank v. Produce Exchange Bank*, 89 S. W. (2d), 33 (Mo. 1935) p. 186.

(2) *Taggart v. School Dist. No. 52, Carroll County*, 88 S. W. (2d), 447 (Mo. App. 1935), p. 189.

(3) *State v. Pierson*, 85 S. W. (2d), 48 (Mo. 1935), p. 191.

(4) *In re Grenning's Estate*, 89 S. W. (2d), 123 (Mo. App. 1936), p. 192.

(5) *State ex rel v. Taxpayers League, etc.*, 87 S. W. (2d), 207 (Mo. App. 1935), p. 194.

(6) *McCombs v. Fidelity & Casualty Co., of New York*, 89 S. W. (2d), 114 (Mo. App. 1935), p. 198.

(7) *Kelly v. The City of Cape Girardeau*, 89 S. W. (2d), 41 (Mo. App. 1935), p. 199.

(8) *Selle v. Selle*, 88 S. W. (2d), 877 (Mo. 1935), p. 202.

(9) *Arnold v. May Dept. Stores Co.*, 85 S. W. (2d), 748 (Mo. 1935), p. 208.

Brown v. Terminal R. R., etc., 85 S. W. (2d),  
226 (Mo. App. 1935), p. 208.

Approved:

S. R. REDMOND,

W. S. HOGSETT.

And here the relator closed his case in chief.

### RESPONDENTS' EVIDENCE

The respondents, to maintain the issues upon their part to be maintained, offered and introduced evidence as follows, to-wit:

E. F. ELLIOTT, having been duly produced and sworn, as aforesaid, was now examined and testified as follows:

#### *Direct Examination of E. F. Elliott*

Mr. Hogsett: Q. Your name, please? A. E. F. Elliott.

Q. Your residence? A. Jefferson City, Missouri.

Q. What official position do you hold? A. Chief Clerk of the Supreme Court of Missouri.

Q. As such, are you the official custodian of the records of the Missouri State Board of Law Examiners? A. I am.

Q. And have you at my request made a tabulation showing the number of applicants for admission to the Bar of Missouri for the five year period, 1931 to 1935, inclusive; and a tabulation of the number of those who had studied law in the



University of Missouri Law School? A. Yes, sir.

Q. Will you state the results of that tabulation? A. The total number, 1931 to 1935, inclusive, 3284 applications filed.

Q. Of those, how many studied law in the University of Missouri Law School? A. 246.

Q. The Supreme Court Library is located in Jefferson City, is it not? A. Yes, sir.

Q. Lincoln University is located in Jefferson City, is it not? A. Yes, sir.

Q. And only a few blocks apart? A. Yes, a few blocks apart.

Q. The Supreme Court Library is open to the public, is it not? A. Yes, sir.

Q. That library is one of the most complete law libraries in the state of Missouri, is it not? A. Yes, sir.

*Cross Examination of E. F. Elliott*

Mr. Houston: Q. Do you know whether the fact that the library is open to the public would have any bearing upon whether it could be accredited to a law school? A. I would not say.

Q. Of the 246 applications made from the University of Missouri, how many passed? A. I could not say that.

Q. Then you don't know the percentage of those who passed from Missouri University as compared to those who came in or applied from other states? A. At a rough guess, I would say about 90 per cent.

Q. Of the University of Missouri passed?

A. Yes, sir.

Q. What is the usual percentage of passing?

A. Average?

Q. Yes. A. Well, about 85 per cent.

Q. You mean, 85 per cent of those who take the examination pass? A. From law schools.

Q. Well, then, the University of Missouri has a slightly higher average than the other schools? A. I could not say that, but that is a mighty good law school, at Missouri.

Q. Didn't you just say that about 90 per cent passed? A. About 90 per cent, something like that.

Mr. Hogsett: Q. That estimate of 90 per cent and 85 per cent is just an estimate made on the spur of the moment? A. Yes, sir.

Q. As a matter of fact, an examination of the record might show that those percentages were reversed? A. Sure.

Mr. Houston: Q. But at the present time, that is your best information and judgment? A. It was just a guess.

Q. But it was your best guess? A. Yes, sir.

(Witness excused.)

And now the respondents called as a witness I. C. TULL, who, being duly produced, sworn and examined, testified as follows:

*Direct Examination of I. C. Tull*

Mr. Hogsett: Q. Please state your name to

the Court. A. I. C. Tull.

Q. What is your occupation? A. Business Manager of Lincoln University.

Q. How long have you held that position? A. 17 years.

Q. Have you at our request made a tabulation of the unexpended balances as of August 9th and September 6th, 1935; and as of April 17th, 1936? A. I have. It is in my brief case.

Q. Will you kindly get it? A. (Witness left the stand and returned, with records.)

Q. Before you answer the question,—

Mr. Hogsett: I wish to call the Court's attention to the fact that in the appropriation act of the legislature found at page 66, Laws of Missouri 1935, appear two appropriations to Lincoln University,—one of \$400,000, and another of \$34,200; or \$434,200 total.

Q. Now will you please give us the unexpended balance in each fund out of the appropriation to Lincoln University as of the dates I specify,—first, August 9, 1935. A. Personal service,—which is salaries,—\$138,684.63; repairs and replacements, August, 1935, \$15,943.36; operation \$56,433.75; additions, \$100,000.

September 6, 1935, salaries \$131,247.96; repairs and replacements, \$14,207.58; operation \$53,164.62; additions \$100,000.

April 17, 1936: Personal service, or salaries, \$70,284.65; repairs and replacements, \$5,770.89; operation \$22,376.21; additions \$61,433.98.

These are the state revenue appropriations.

The "addition" is used for construction of buildings, only, and for no other purpose.

Q. That part of these figures you have labeled as "additions" is earmarked to be used for buildings? A. Yes, sir; and only for buildings. That is in addition to PWA funds. This tabulation is complete for state revenue. Now in the federal fund, Morrill-Nelson Fund, we had a balance, August, 1935, of \$3,223.07. September 6, same balance: April 17, 1936, \$1265.73.

Q. That is all. Thank you.

*Cross Examination of F. C. Tull*

Mr. Redmond: Q. This \$34,200 appropriation of 1935, out of the Lincoln University fund,—wasn't that just permitting the University to use the money that the students had paid the University as tuition and fees? A. Yes, that is the earnings.

Q. That was no money out of the state, but money that the state had collected? A. That is right.

Q. This money was appropriated in 1935 for those two years. Until when is it supposed to run? A. Until December 31, 1936.

Q. Until December 31, 1936. There was a balance of \$159,000, April 17, 1936. Judging from your experience in the past, will there be a balance or a deficit December 31, 1936? A. It will be a deficit. We will have to make up a deficit for the state appropriations through the Lincoln University funds,—I am hoping to do that. That is mere speculation, of course.



Q. This money that you have specified is money for the operation, of the school, without any expansion, other than additions and buildings for college purposes? A. That is right.

Q. Has any money been appropriated for expansion other than building buildings, for college purposes? A. No, sir.

Mr. Hogsett: We object to that as calling for a conclusion. The appropriation Acts speak for themselves. It is obvious that any of the funds included for such purpose would be available for expansion.

Mr. Redmond: I don't think they can wait to find what the answer will be, and then object.

The Court: I will let it stand.

(Witness excused.)

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Mr. Hogsett: I want the record to show, Your Honor, that I call your attention to the following: Session Acts 1921, on page 65, the amount appropriated for Lincoln University, \$329,500. At page 87, \$500,000. I think in all fairness it should be stated that that appropriation was declared unconstitutional, and the School never got any benefit of it. I mention it, nevertheless. At page 101, \$595.66, that was, for the year, including the \$500,000, \$830,095.66. Session Acts of 1923, at page 51,—\$11,946.41.

The Court: Don't this show (indicating paper) the exact amount they did get?

Mr. Hogsett: By subtracting the \$500,000 \$330,095.66, which they did get in the '21 Laws. Now coming to 1923, page 51, \$11,946.41.

Mr. Redmond: Would you specify that that was a deficiency bill?

Mr. Hogsett: I don't know about that,—maybe,—it is an odd amount. At page 60, \$49,330.42. Page 60, \$70,000. Page 96, \$174,730. Total for that session, \$306,006.83.

Session Laws of 1925, page 57, \$996; page 78, \$224,700; total for that session, \$225,696.

Session Laws of 1927, page 88, \$278,000.

Session Laws of 1929, page 24, \$306,500, Page 101, \$250,000. Total for that session, \$556,500.

Session Laws of 1931, page 46, \$520,655.

Session Laws of 1933, page 124, \$286,000; page 130, \$40,000; total for 1933 session, \$326,000.

Session Laws of 1935,—that is the last one,—page 66, \$400,000; page 66, \$34,200; total for that session \$434,200.

The total for all these appropriations, \$3,477,153.49,—from which should be subtracted \$500,000 eliminated by the decision in the Hackman case, leaving a net balance of \$2,977,153.49.

Now I call counsel's attention to the fact that at page 47 of the Session Laws of 1931 the record shows \$520,655 to the Lincoln University at Jefferson City as I stated.

Mr. Redmond: But \$208,155 of that was re-appropriated; out of the \$250,000 of two years before.

Mr. Hogsett: I don't know.

Mr. Redmond: I think you will find that is a fact.

Mr. Hogsett: And they got it during that biennium.

Mr. Redmond: But they didn't get it the biennium before. I would like for the record to show that for the biennium of 1931 \$208,155 of the appropriation was the unexpended part of \$250,000 appropriated in 1929 for additional buildings, and was not an additional amount.

The Court: They had appropriated it the session before and the money was not spent and the next time it was reappropriated?

Mr. Redmond: That is it.

Mr. Hogsett: Now by agreement of counsel the distances and railroad fares from St. Louis to Lawrence, Kansas, Lincoln Nebraska, Iowa City, Iowa, and Champaign, Illinois, and the railroad mileage and fares from certain other towns in Missouri to Columbia, Missouri, are as follows: (Producing a sheet of paper.)

Mr. Redmond: We will stipulate that that is in there.

Mr. Hogsett: Counsel for relator stipulated that the facts stated in that letter, Exhibit 7, are correct.

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Respondents' Exhibit 7, mentioned above, is in words and figures as follows, to-wit:

#### RESPONDENTS' EXHIBIT 7

June 15, 1936

In re: State ex rel Gaines v. Curators of the University of Missouri, et al.

Mr. S. R. Redmond,  
11 North Jefferson Street,  
St. Louis, Missouri.

Dear Sir:

In line with our tentative agreement at St. Louis, we would like for you to admit at the trial that the distances and railroad fares from St. Louis to Lawrence, Lincoln, Iowa City and Champaign, and the distances and railroad fares from certain other towns in Missouri to Columbia, Missouri, are as follows:

	Mileage	Fare
St. Louis to Columbia	146	\$2.95
St. Louis to Champaign	174	3.48
St. Louis to Iowa City	299	5.98
St. Louis to Lawrence	319	6.38
St. Louis to Lincoln	468	9.35
Rockport to Columbia	308	6.04
Caruthersville to Columbia	367	7.41
Kahoka to Columbia	178	3.59

We have investigated these facts and are advised by the Wabash Railway Company agents that they are correct.

Will you also agree that any parts of the respective catalogs of the Universities of Missouri, Kansas, Nebraska, Iowa and Illinois may be received in evidence for the purpose of proving the respective curricula, tuition and other fees, and case books used by the schools of law in those institutions. Of course we can bring witnesses to identify the catalogs, and to testify to their correctness in respect to these matters, but to avoid that unnecessary expense we request that you make this agreement. It is quite possible that you may desire to offer some parts of these cata-



logs, and of course we make the same agreement in your favor.

Kindly let us have a prompt reply to this letter. Thanking you, we remain

Yours very truly,

WSH:K

P. S. If there are any facts you want us to admit, we will do so if possible.

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Mr. Hogsett: From the University of Missouri catalogue, 1936-1937, I offer pages 56 to 66, showing the accredited schools in Missouri,—the point being in that, that Lincoln University is not among the accredited schools in the University of Missouri catalogue. From the same catalogue I offer in evidence pages 67 to 71, inclusive, the portion that I have indicated in brackets, showing the tuition and fees. Counsel has heretofore offered pages 224 to 226, inclusive, so I will not offer that. From the same volume I offer pages 323 to 327, inclusive, the portion in brackets, being a detailed description of the curriculum of the Missouri Law School, with a list of the case books. Now I ask the Reporter to identify the volume as an Exhibit.

NOTE: Said volume was marked by the Reporter as Respondent's Exhibit 8, (Same as Relator's Exhibit P.)

The Court: If there is no objection it will be admitted in evidence.

Mr. Hogsett: The Court will understand I am

offering in evidence just the portions of the Exhibit specified.

Said portions of Respondents' Exhibit 8, so offered in evidence as aforesaid, are in words and figures as follows, to-wit:

Pages 56 to 66 of Respondent's Exhibit 8 contain a list of all of the schools, colleges and universities accredited with the University of Missouri. This list includes 21 colleges and universities, 17 junior colleges and approximately 800 secondary schools. Neither Lincoln University nor any other school, college or university for Negroes appears among the accredited schools so tabulated.

The University of Missouri catalogue, Respondents' Exhibit 8, contains a list of all the schools, colleges and universities accredited with the University of Missouri that are located in the State of Missouri. No others are specified.

A note immediately preceding the list of secondary schools reads as follows:

"The University of Missouri will accept the certificate from any school accredited by the North Central Association of Colleges and Secondary Schools or by the Association of Colleges and Secondary Schools of the Southern States. Schools on this list marked with a star (\*) are on the North Central Association list."

Pages 67 to 71, inclusive, of said Respondents' Exhibit 8 relate to Tuition and Fees, and specify the following fees to be paid by a Missouri resi-

dent student in the School of Law of the University of Missouri:

Library, hospital and incidental fees, \$4.00 per credit hour (normally 29 hours the first year, and 25 hours the second and third years).

Activity fee, per semester, \$5.75.

Diploma fee to be paid for each degree taken in the University, \$5.00.

Fee for each certificate, \$2.00.

Said pages of Respondents' Exhibit 8 also provide that the University reserves the right at any time to make changes in any or all fees, without advance notice.

The parts of pages 323 to 327, inclusive, of said Respondents' Exhibit 8, so offered in evidence, contain a detailed description of the curriculum of the School of Law of the University of Missouri, and the case books used in the various courses of study therein. Said curriculum is composed of a three-year course in the study of the law. During the first year the subjects taught and the hours of credit allowed are as follows:

Contracts, 6 hours.

Torts, 6 hours.

Personal property, 3 hours.

Pleading, 4 hours.

Real property, 3 hours.

Equity, 3 hours.

Criminal law and procedure, 3 hours.

Legal bibliography, 1 hour.

The required courses for the second year, and

the hours of credit allowed for each are as follows:

Equity, 2 hours.  
Pleading, 2 hours.  
Evidence, 5 hours.

The elective courses for the second year, and the hours of credit allowed for each are as follows:

Conveyances, 5 hours.  
Bill and notes, 3 hours.  
Wills and administration, 3 hours.  
Sales, 3 hours.  
Statutory interpretation, 3 hours.  
Insurance, 2 hours.  
Quasi contracts, 3 hours.  
Persons, 2 hours.  
Legal research, 2 hours.

The required course for the third year, and the hours of credit allowed therefor, are as follows:

Practice, 5 hours.

The elective courses for the third year, and the hours of credit allowed for each are as follows:

Trusts, 3 hours.  
Business organization, 7 hours.  
Constitutional law, 5 hours.  
Conflict of laws, 3 hours.  
Administrative law, 3 hours.  
Legal ethics, 1 hour.  
Creditors' rights, 3 hours.  
Taxation, 3 hours.



Federal procedure, 2 hours.

Equity, 3 hours.

Future interests, 3 hours.

Mortgages, 3 hours.

Public utilities, 3 hours.

Municipal corporations, 2 hours.

Legal research, 2 hours.

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Mr. Hogsett: Now under agreement of counsel, I offer the Bulletin of the Universities of Kansas, Volume 37, No. 1, being a general information catalogue which the Reporter will now mark as Respondents' Exhibit 9 for identification. (Same was marked as directed.) At pages 23 and 24 of that Exhibit I offer the portion indicated in brackets, showing the fees. From the same Exhibit I offer page 114, that portion indicated in brackets, showing the curriculum of the Kansas Law School.

The Court: Let it be considered in evidence.

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Said portions of Respondents' Exhibit 9, so offered in evidence as aforesaid, are in words and figures as follows, to-wit:

The portions of pages 23 and 24 of said Respondents' Exhibit 9, so offered in evidence, relate to fees to be paid by students, and specify the following fees to be paid by a student in the School of Law of the University of Kansas:

Matriculation fee: For a resident, \$7.50; for a non-resident, \$15.00. This fee is required to be paid but once, and is never refunded.

Incidental fee, in the School of Law, payable each year, in equal installments by semesters, \$45.00 for a Kansas resident and \$80.00 for a non-resident.

Health fee, \$6.00 per year.

General activity fee, \$6.00 for the fall semester, and \$2.75 for the spring semester.

Diploma fee, \$7.50 for each degree granted.

Page 114 of said Exhibit 9 contains the curriculum of the School of Law of the University of Kansas, and is substantially the same as the curriculum of the School of Law of the University of Missouri.

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Mr. Hogsett: Now from another volume, being Bulletin of the University of Kansas, issue No. 2, which the Reporter will mark as Exhibit 10, I offer pages 89 to 93 inclusive, the portion indicated in brackets, being a detailed description of the curriculum of the courses of study and the case books used in the Law School of the University of Kansas. That appears on pages 89 to 93, inclusive, the portion in brackets.

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Said Respondents' Exhibit 10, the portions offered in evidence as aforesaid, is in words and figures as follows, to-wit:

The portions of pages 89 to 93, inclusive, of said Respondents' Exhibit 10, so offered in evidence, contain the detailed description of the curriculum of the courses of study and case books used in the School of Law of the University of Kansas, which curriculum is substantially the same

as the curriculum of the School of Law of the University of Missouri, and the case books used are largely the same as the case books used in the latter school.

Mr. Hogsett: Now I produce the University of Nebraska Bulletin for the College of Law and ask the reporter to identify it as an exhibit.

NOTE: Same was marked as Respondents' Exhibit 11.

Mr. Hogsett: From this last mentioned exhibit I offer the portion on pages 7 to 9, indicated in brackets, being a detailed description of registration fees and expenses and other requirements of that sort. From the same exhibit at page 14, I offer the portion appearing in brackets, being a detailed description of the curriculum of the School of Law, together with the case books used in that system.

Said Exhibit 11, the portions offered in evidence as aforesaid, is in words and figures as follows, to-wit:

The parts of pages 7 to 9 of said Respondents' Exhibit 11, so offered in evidence, relate to fees and expenses to be paid by students, and specify the following fees to be paid by students in the School of Law of the University of Nebraska:

Matriculation fee (payable on entering the college), \$5.00.

Registration fee (each semester), \$1.00.

Medical service (each semester), \$1.00.

Student Union Building Fund (each semester),

ter), \$1.00.

Graduation fee, \$5.00.

Tuition fees, \$4.00 per credit hour (except for courses on contracts, criminal law, common law pleading, and torts, for which the fee is \$3.00 per credit hour; and except legal bibliography for which the fee is \$2.00 per credit hour). The graduation requirements cause the tuition fees to be \$104.00 for the first year, and \$96.00 for each of the second and third years.

Non-resident fee, \$25.00 per semester.

At page 14 of said Respondents' Exhibit 11 appears a detailed description of the curriculum of the School of Law of the University of Nebraska, which is substantially the same as the curriculum of the School of Law of the University of Missouri. On said page also appear the case books used in the various courses, which are largely the same as the case books used in the School of Law of the University of Missouri.

Mr. Hogsett: Now under the same agreement that counsel has made with us, I produce the University of Iowa Bulletin which the Reporter will mark as an exhibit.

NOTE: Same was marked as Respondents' Exhibit 12.

Mr. Hogsett: From this exhibit I offer pages 80 to 82, the portion indicated in brackets, showing the expenses and fees, scholarship prizes, and so forth. From the same volume I offer, pages 304 to 307 inclusive, indicated in brackets, and being a detailed description of the curriculum of the



School of Law of that institution and the case books used therein.

Said Exhibit 12, being the portions offered in evidence as aforesaid, is in words and figures as follows, to-wit:

The portions of pages 80 to 82 of said Respondents' Exhibit 12, so offered in evidence, relate to expenses and fees, and specify the following fees to be paid by students in the School of Law of the University of Iowa:

Matriculation fee (paid but once), \$10.00.

Semester fees, payable at the beginning of each semester covering all fixed charges, \$64.00.

Non-resident fee, payable each semester, \$20.00.

Graduation fee, \$15.00.

Certificate fee, \$3.00.

The portions of pages 304 to 307, inclusive, of said Respondents' Exhibit 12, so offered in evidence, contain a detailed description of the curriculum of the School of Law of the University of Iowa, which is substantially the same as the curriculum of the School of Law of the University of Missouri. Said pages also include a list of the case books used in the various courses, which are largely the same as the case books used in the School of Law of the University of Missouri.

Mr. Hogsett: Under the same agreement of counsel, I produce the Bulletin of the University

of Illinois and ask that the Reporter mark it as an Exhibit.

NOTE: Same was marked Respondents' Exhibit 13.

Mr. Hogsett: From page 92 of the last mentioned exhibit I offer the portion in brackets, being a statement of the fees required in that school, and from the same exhibit I offer pages 305 to 307, as indicated in brackets, being a detailed description of the curriculum and case books used in the School of Law of that institution.

The Court: It will be admitted in evidence.

Said Exhibit 13, being the portions offered in evidence as aforesaid, is in words and figures as follows, to-wit:

The portion of page 92 of said Respondents' Exhibit 13, so offered in evidence, relates to the fees to be paid by students, and specifies the following fees to be paid by a student in the School of Law of the University of Illinois:

Matriculation fee, \$10.00.

Incidental fee (payable each semester), \$50.00 for a resident, and \$75.00 for a non-resident of Illinois.

Graduation fee, \$10.00.

The portions of pages 305 to 307 of said Respondents' Exhibit 13, so offered in evidence, contain a detailed description of the curriculum of the School of Law of the University of Illinois, which is substantially the same as the curriculum of the School of Law of the University of Missouri.

Said pages also contain a list of the case books used, which are largely the same as the case books used in the School of Law of the University of Missouri.

And the Respondents called as a witness, E. R. ADAMS, who, being duly produced, sworn and examined, testified as follows:

*Direct Examination of E. R. Adams*

Mr. Hogsett: Please state your name to the Court. A. E. R. Adams.

Q. What official position do you hold? A. Assistant State Superintendent of Public Schools.

Q. How long have you held that position? A. About 18 months.

Q. When did you begin your term of office in that position? A. January 14, 1935.

Q. As such official have you had charge of the disbursement of the so-called out-of-state tuitions for Negroes, authorized by the 1935 appropriation act? A. I have.

Q. Now the appropriation in 1935 for out-of-state tuitions was \$10,000,—was it not? A. Correct.

Q. Have you, at our request, made a careful examination to ascertain the amount on hand in that out-of-state fund at certain dates,—yes or no? A. I have.

Q. On August 9, 1935,—which, as the Court will recall, was the date Mr. Gaines graduated, what was the unexpended balance in that fund? A. \$2359, I believe.

Q. Well, have you got that accurately? A. I have it.

Q. Will you kindly get it? A. Yes, sir. (The witness left the stand and returned). The exact unexpended balance was \$2359.98.

Q. On September 6, 1935, what was the balance? A. The same amount.

Q. Now on April 17, 1936, what was the balance there? A. I haven't that figure, sir. I have it for a later date.

Q. Just a minute. I think there is a letter here,—I show you a letter from Mr. Lloyd W. King, State Superintendent of Schools, written June 8, of this year,—just the other day,—in which he gives these figures as follows: August 9, 1935, \$6351.18,—remaining as a balance in this fund. On September 6, 1935, \$6351.18 remaining as a balance; and at the present time the unexpended balance is \$2359.98. That does not agree with your figures. I wish you would kindly reconcile them, if you will. Step down from the witness stand, read that letter, then return and tell us what the facts are.

(Witness excused.)

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NOTE: A short recess was taken. Court now reconvened, all present as before, at which time the following proceedings were had herein:

The witness, E. R. Adams, resumed to the stand and the direct examination was continued.

Mr. Hogsett: Q. Mr. Adams, in the recess



period, have you ascertained the correct figures showing the information that I last inquired about?

A. I have.

Q. Will you correct your former answer by giving the correct information? A. I will.

Q. The first date is August 9, 1935. What amount was on hand unexpended in the tuition fund for out-of-state instruction on that date? A. \$6351.18.

Q. Now the same information as of September 6, 1935, please, sir. A. The amount was \$6351.18.

Q. The same as on August 9? A. Yes, sir.

Q. The same amount was in there on each of those dates,—is that right? A. Yes, sir.

Q. Now the same information as of April 17, 1936? A. The balance was \$2214.98.

Mr. Hogsett: That is all.

*Cross Examination of E. R. Adams*

Mr. Houston: Q. Mr. Adams, this \$10,000 was appropriated for two years, is that right? A. Yes, sir.

Q. Are you the officer engaged in administering it? A. Well, Mr. King is the officer and I am his agent.

Q. Well, you have direct personal knowledge of the administration of that fund? A. I do.

Q. You are administering it under the appropriation act of 1935, is that right? A. Yes, sir.

Q. Under the appropriation act of 1935, you

do not pay the tuition of Negro students outside the state, do you? A. We pay—

Q. You pay the differential? A. We pay the difference.

Q. If the tuition in Missouri is \$50 per year, and the tuition in the other university is \$48, the student gets absolutely nothing,—is that true?

A. That would be the difference, yes, sir.

Q. Well, the answer is "Yes," is it? A. Will you state that question again?

(Question read by the Reporter.)

The Witness: A. Yes.

Mr. Houston: Q. So that, so far as your administration is concerned, the Negro student who, under the interpretation that you place on the act, is compelled to go outside the state, may not get anything whatsoever unless the tuition in the out-of-state university exceeds the tuition at the University of Missouri, and in that event he gets only the balance, or difference.

A. That is correct.

*Re-direct Examination of E. R. Adams*

Mr. Hogsett: Q. You are not connected with the Board of Curators of the Lincoln University, are you? A. No, sir.

Q. You have nothing to do with enforcing or administering the 1921 statute binding that Board to pay the full tuition, have you? A. No, sir.

*Re-cross Examination of E. R. Adams*

Mr. Houston: Q. Is there any other scholarship act for Negro students in Missouri be-

side the act you are administering? A. Not that I am familiar with.

Q. Any other scholarship fund, so far as you know? A. Yes, the Rosenwald Fund offers scholarships.

Q. But that is private,—it has nothing to do with this matter? A. We recommend those scholarships through our Department.

Q. That is not a right,—that is a gift of grace, is it not?

Mr. Hogsett: That calls for a conclusion.

The Court: Let him answer.

Mr. Houston: Q. Do you know of any other state fund for Negro scholarships? A. I do not.

Q. By what authority is your office administering this particular fund?

Mr. Hogsett: We object to that for the reason that the appropriation act, itself, would be the basis of any authority.

The Court: Yes, I think the objection will be sustained.

Mr. Houston: I except to that and tender the proof that they are administering this fund absolutely without authority.

Mr. Hogsett: Well, I will withdraw the objection and let him go ahead and prove it.

The Court: Very well, go ahead. Objection withdrawn.

Mr. Houston: Q. By what authority is your office administering this scholarship fund. A. I am not sure that I can answer that. We are administering that because the former administration administered it.

Q. Well let us get that question answered.

A. The administration previous to our coming into office had the duty of administering the fund and we continued to administer it as it had been in former years.

Q. The right of adverse possession? A. Yes, sir.

*Re-direct Examination of E. R. Adams*

Mr. Hogsett: The 1921 Act, placing the burden on the Lincoln University Curators to pay the full tuition, you have nothing to do with,—you only have to do with administering the funds appropriated by the legislature specifically for excess tuitions,—that is the sum total of the whole thing, isn't it? A. Yes, sir.

Q. That is all. A. We didn't—

Q. That is all. A. We didn't—

Mr. Houston: Let him finish the answer.

The Witness: Up to about September, 1935, our Department was paying the full amount of tuition, and not the difference, but we began to interpret this act and consequently saw that we were not administering it according to the 1931 act, and we ceased to pay anything except the difference.

Mr. Hogsett: That is all.

*Re-cross Examination of E. R. Adams*

Mr. Houston: Q. Is it not true that demand has now been made upon your office by the Board of Curators to take the administration out of your hands. A. The demand has not been made, so far as I know.



Q. But you know now that there is a dispute,—that the Board of Curators of Lincoln University is contesting your right to administer this fund?

A. Yes, sir. And I hope they take that out of our hands and administer it.

(Witness excused.)

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And the Respondents called as a witness, C. B. ROLLINS, who, being duly produced, sworn and testified as follows, to-wit:

*Direct Examination of C. B. Rollins*

Mr. Cave: Q. Your name is C. B. Rollins?

A. Yes, sir.

Q. You live here in Columbia? A. Yes, sir.

Q. How long have you lived here, Mr. Rollins? A. I have lived here for 82 years.

Q. During that time have you lived in the immediate neighborhood of the Missouri University? A. Almost in the shadow of its dome, sir.

Q. Did your father and family take an active part in the establishment of the University,—in the very beginning of it? A. Yes, sir.

Q. You are familiar with the University and have been during your life time? A. Generally,—quite familiar; yes, sir.

Q. Were you for a number of years a member of the Board of Curators? A. Yes, sir.

Q. And were you for time President of the Alumni Association? A. Yes, sir, I was.

Q. Have you during your entire life time

had direct connection with this University and its growth and development? A. Yes, sir, more or less.

Q. And taken a great interest in its affairs, have you? A. Always.

Q. I will ask you whether, during the entire time that you have known Missouri University, you ever knew of a Negro being admitted to the University, or applying for admission prior to the time of the application that is being heard at this time? A. No, sir.

Q. Has it during that time been the policy of the University, and the policy of the State of Missouri, to provide separate educational systems for the Negroes and for the whites? A. Yes, sir; I think that is a fact.

*Cross Examination of C. B. Rollins*

Mr. Houston: Q. You were born before the Civil War, is that not correct? A. Yes, sir.

Q. Lots of changes have occurred since then, that is true also? A. Yes, sir.

Q. Missouri has had two changes of constitution since that time,—'65 and '75? A. Yes, sir.

Q. Likewise, the Civil status of Negroes have completely changed, is that not right? A. Yes, sir.

Q. So far as you know, no Negro ever applied to go to the State of Missouri University up to this time? A. I never have heard of such a case.

Q. So far as you know, there has been no occasion on which the University of Missouri has had to make a declaration of policy prior to the

case of Lloyd Gaines, either? A. No, sir.  
(Witness excused.)

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And the Respondents called as a witness N. T. GENTRY, who, being duly produced, sworn and examined, testified as follows, to-wit:

*Direct Examination of N. T. Gentry*

Mr. Cave: Your name is Judge N. T. Gentry?

A. Yes, sir.

Q. You live here in Columbia? A. Yes, sir.

Q. And you have lived here all your life, have you, Judge? A. Yes, sir.

Q. What is your age at this time? A. 70.

Q. You are a member of the Boone County Bar and various bar associations, including the American Bar Association? A. Yes, sir.

Q. You have practiced law in Columbia, all your life, all the time— A. All my professional life, yes, sir.

Q. You have served in this state as a member of the Supreme Court of the state? A. Yes, sir.

Q. And as Attorney-General of the state? A. Yes, sir.

Q. And as Circuit Judge of the 34th Judicial Circuit? A. Yes, sir.

Q. During your entire life, have you been familiar with the State University? A. Yes, sir.

Q. You are a graduate of that institution? A. Yes, sir.

Q. You have lived in this community all that time and have been closely connected with the University? A. I have been a neighbor of the University all that time and lived very close to it.

Q. During the time you have been acquainted with the University of Missouri, have you ever known of a Negro being admitted to the University as a student, or making formal application to become a member of the student body of the University? A. No, I never heard of any.

Q. Have you devoted much of your spare time to the study of the history of the state of Missouri and the people of the state of Missouri? A. Yes, sir.

Q. I will ask you whether or not, from your reading and study along that line, it has been the policy of the state of Missouri and of the University to develop in this state an educational system for the whites, and for the Negroes,—separate and distinct? A. Yes, sir.

Q. From the grammar school to the university? A. Yes, sir.

Q. That has been the settled policy of this state since you have known it? A. Yes, sir.

*Cross Examination of N. T. Gentry*

Mr. Houston: Judge, do you know whether there is any school now in Missouri of higher education where Negroes and whites not only matriculate together but live in the same dormitory? A. In Missouri?

Q. Yes. A. I don't know of any such institution.

Q. Of any institution? A. No, sir; I don't.



Q. Have you ever heard of Eden Theological Seminary in St. Louis? A. Yes, sir.

Q. In Webster Groves,—my mistake. A. I have heard of that school, but I don't know anything about it.

Q. Well, the answer to that question will be—  
A. I don't know anything about Eden School.

Q. You have been Judge of the Circuit Court, have you not? A. Yes, sir.

Q. Where is that circuit? A. Here,—Boone and Callaway Counties.

Q. You didn't happen to have any Negro practitioners practicing before you on occasion? A. No, not in the circuit court,—no.

Q. Have any Negro practitioners ever practiced before you? A. Yes, in the Supreme Court.

Q. They sat down at the same bench with white counsel, just as we are sitting now, today?

A. I think the case was submitted on brief. I don't think they made any oral argument.

Q. You do see us sitting here today? A. Yes, sir.

Q. There would be no more friction over white and Negro students sitting down in the same room studying than there is for white and Negro counsel sitting at the same table,—would there?

Mr. Hogsett: That is objected to as argumentative and speculative.

The Court: Objection sustained.

To which ruling of the Court the relator, by

his counsel, then and there at the time duly excepted and saved his exceptions.

(Witness excused.)

And now the respondents called as a witness, F. M. McDAVID, who, being duly produced, sworn and examined, testified as follows:

*Direct Examination of F. M. McDavid*

Mr. Hogsett: Q. Please state your name to the Court. A. F. M. McDavid.

Q. Where do you live, Senator McDavid? A. Springfield, Missouri.

Q. What official position do you hold with respect to the University of Missouri? A. Member of the Board of Curators, and President at this time.

Q. How long have you been a member of the Board, and how long have you been President of the Board? A. I have been a member of the Board since 1921, in June; President of the Board, I think, since 1931.

Q. Has each member of the Board taken the oath required by law? A. Yes, I think so.

Q. I show you—

Mr. Hogsett: Let it be admitted that the Board of Curators on March 27th, 1936, passed a resolution which has been copied into one of the letters heretofore offered in evidence, to-wit, the letter of March 31st, 1936, marked Relator's Exhibit N, 1-2;—you say "yes" to that?

Mr. Houston: Yes.

Mr. Hogsett: Q. In rejecting Gaines' application, did the Board of Curators act from any other reason than a desire to obey what it conceived to be the mandate of the constitution, the law, and the public policy of the State of Missouri requiring a separation of the races for the purpose of education?

Mr. Houston: We object, because the resolution speaks for itself.

Mr. Hogsett: Our position is this: They say in their petition and in the affirmative writ that the action of the Board was arbitrary, and the motive of the Board is, in that way, put in issue. Of course, the resolution speaks for itself. I have a right to tender affirmative proof to remove from the case any such impression as that the Board was actuated by anything else except what it conceived to be the constitution, the law and the public policy. That is what I am asking this witness.

Mr. Houston: May I suggest that if counsel wants to ask the witness if there were any other motives actuating the Board other than what is expressed in the resolution, that is proper; but I don't think the question is proper in the other form.

Mr. Hogsett: I think that is almost tantamount to what I asked, but I prefer the form in which I put it.

The Court: Let me see the resolution. (Document handed up to the Court) Objection overruled.

To which ruling of the Court, the relator, by

his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Hogsett: Q. You may answer.

(Question read by reporter, upon request.)

The Witness: A. The Board acted from no other reason.

Mr. Hogsett: Q. Has the Board, as such, ever had any policy on this subject,—has it ever had occasion to formulate any policy until Mr. Gaines attempted to gain admission? A. The matter has never come before us.

Q. So, when, for the first time in the history of the institution, a Negro applied for admission, you acted on what you conceived to be your duty under the law? A. That is correct.

The Court: I am admitting those questions and answers on the theory that it is for the purpose of showing that there is no malice or ill will.

Mr. Houston: As far as there being any personal malice or ill will, we don't argue that. It is a question of the legal effect of the act.

Mr. Hogsett: Q. From your connection with the business or profession of Education,—what would be the effect of the admission of Negroes into the University of Missouri? A. I think it would create a great amount of trouble.

Q. How? A. I think that it would make discipline difficult. For this reason;—everybody knows, every citizen knows; what the constitution of Missouri provides with respect to separate education of the two races. Every citizen and every student is perfectly familiar with the general policies of the State of Missouri that



have been recognized through the years. Every student and every citizen of this city where this school is located knows the traditions of this city and school, running through nearly a hundred years, respecting that matter. To admit a Negro into this school would, to my way of thinking, be subversive of discipline, which is so important on the campus, among the students and in the various departments of the University; and that was the thing that was considered, among other things, in ruling on this business. That is the duty of the Board of Curators under our constitution, yes,—it is the governing board of the school. Unusual, in some respects, is the authority given the Board of Curators. Now the government of the school includes its discipline. When we considered the constitution of '65, with the word "may" provide separate schools, and then a little later in the constitution where it said "shall"; and then read on down through the statutes to the consolidated schools, high schools, and then the Act of 1921, we were thoroughly persuaded that the law was clear and our duty, therefore, clear, as a matter of public policy evidenced by the statutes and constitution of the state and the well known traditions of the State of Missouri, and there was no other course open to us about that.

Mr. Hogsett: You may take the witness.

*Cross Examination of F. M. McDavid*

Mr. Houston: Q. Senator, in the cross examination let us start out with the assumption that we accord you good faith in this entire mat-

ter, so that in asking you the questions you will realize that we are always assuming good faith,—that is understood. We accord you that as a public official. You also took an oath to obey the Constitution of the United States, did you not?  
A. Yes, sir.

Q. You would not set the Constitution of the State of Missouri over the Constitution of the United States, would you, sir? A. No, sir.

Q. Nor the traditions of Missouri,—would you? A. No, sir.

Q. And therefore if there came a conflict between the Fourteenth Amendment to the Constitution of the United States and the Constitution of the State of Missouri, as a public official you would be forced to recognize the priority of the Constitution of the United States? A. That matter is well known to the members of the Board and was very fully discussed,—very fully discussed. We did not act upon this hastily. It was a very serious question, and they handled it as such.

Q. May I say, also, that we consider it quite a serious question, and I think we are both approaching it in the same attitude. You spoke about a hundred years tradition in this state. Assuming the fact that, of course, nobody wants to suggest any paralysis of fear or to upset the people of the state of Missouri, you would at the same time allow that there will be some time when that tradition would not bind progress forever,—that would be true, would it? A. I don't know what you mean by "progress."

Q. Have you ever considered what the South

pays for a dual system of schools? A. I don't know that.

Q. Have you ever stopped to consider— A. I am quite familiar with the history of Missouri and quite familiar with its schools and with the University.

Q. You are familiar with the fact that at no place in the constitution does it say that Negroes shall not attend the State University of Missouri?

A. I do say that, in my judgment, no lawyer can read the statute of 1921 and not be convinced absolutely, if he is familiar with the nature of that body,—who would not be convinced that the thought was that that was the final capsheaf,—having direct connection with the common schools, consolidated schools, high schools, and now the University. And so they rebuild and recreate and make a new institution out of Lincoln Institute and make of it a University, and give to its Board of Curators the same power we have in connection with the University of Missouri. You can't read that statute without being convinced that the legislative will was to make the same rules apply to the University as to the common schools. They are building a University for the Colored people and the place where they are to be educated, and the University here for the white people, and the Boards have the same power with respect to each.

Q. Has there been any university established for the Negroes? A. I only know of Lincoln University.

Q. Do you know whether it is a university in fact? A. I do not know except I have full

confidence—I have read the language of the bill, and I have read the opinion of the Court construing the act. I consider it to be promissory and mandatory, and I assume the Board will try to do its duty. They can make it a “university” if they have not done so. The law so provides, and pending the full development of it—recognizing that it had not been fully developed at that time,—they could do certain other things which I will not discuss at this time.

Q. They give Negroes a piece of paper, while the white citizens have an actuality— A. How is that?

Q. Merely a piece of paper, just a legislative fiat, whereas the white citizens have an actual, existing School of Law? A. I would say that the Colored people would have no right to complain until they have made demand upon the body that had been given that power to create the thing which they wish. And until that time comes and they have made the demand—if the legislature has given the power to a certain body to create a university, that is the place to strike.

Q. Suppose the legislature was not to be in session during the academic year, when—as you have heard—there would not be any excess of money but a deficiency of money at the end of the appropriation year, and that there was no money for expansion,—what would you say a Negro was to do in the interim if he was growing older each day? A. Well, I hardly think that is a fair question, but I will try to answer it. I don't think that education—



The Court: I will say, as far as this Court is concerned, unless you think it would be necessary to your record the Court is not interested in this testimony. I think that is just asking for a conclusion of Senator McDavid that the Court will have to make for itself.

The Witness: I think so, too.

To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

Mr. Houston: No further questions, Your Honor.

(The witness leaving the stand.)

Mr. Houston: Just one question.

The Court: Come back to the stand.

And now the witness F. M. McDavid resumed the stand, testifying further as follows, to-wit:

Mr. Houston: Q. Senator, you are familiar with another case in which this same question arose, are you not,—against the University of Maryland? A. I have seen that case; yes, sir.

Q. You are familiar with the fact that in that particular case the Negro student was granted admission?

Mr. Cave: We object to that as immaterial. The decision speaks for itself.

Mr. Houston: Your Honor, I wanted to ask the next question,—it was that they had the same situation, probably, as Missouri and did they make any investigation to determine whether any breach of discipline had occurred in the University of Maryland as a result of this Negro student's presence?

The Court: If you had objected to the greater part of Senator McDavid's testimony, I would have sustained it. I am going to let him answer that question, but I don't think that the testimony was admissible in the first place.

Mr. Houston: Well, our side has been trying it with the door wide open so you can have the benefit of all the facts and circumstances.

The Witness: What was the question?

Mr. Houston: Q. You are familiar with the fact that the Negro boy was granted admission to the School of Law of the University of Maryland?

A. I think so.

Q. And you are familiar with the fact that Maryland has had the same public policy of education as Missouri? A. I don't know about that.

Q. Did you make any investigation, in considering the Gaines case, to find whether any disciplinary problems had arisen at the University of Maryland because of his presence? A. I thought the statute of 1921 created a distinction between the two cases and I now think so. I am not familiar with the state of Maryland. I am familiar with the history of Missouri and have been close to its problems and I think I know the temper of the people of Missouri. I think I was actuated by proper motives in determining what we had to do, and I think I was in accord with every other member of the Board on that subject.

Q. Did you ever put it up to the students to determine what they thought about it? A. If you had been a member of the Board of Cura-

tors as long as I have, with all respect to the student body, you would not, I think, submit to the students the government of the University any more than you would appeal to the crowd to overrule an umpire.

Q. But at the same time it is the students who would have to be on the same campus and in the same classroom? A. I can only use my best judgment as to the effect on the student body. I talked with a good many students about this. I don't hesitate to say that I think it would be a most unfortunate thing, an unhappy thing,—looked at from the interests of the student applying. I don't think he would be happy and I don't think the other crowd would be happy. I think it would be unfortunate for the education of the colored race and unfortunate for the support given and unfortunate for the support which would be given by the legislature to Lincoln University. That is one of the vital things in this case.

Q. You also understand that this suit about the Law School does not affect Lincoln University in the college department? A. I understand that.

Q. Senator, have you ever considered that Missouri is asking the other states to take Missouri's burden off its shoulders?

Mr. Hogsett: We object to that as an unfair question. The 1921 Act does not do anything of the kind.

The Witness: I don't understand we have made any such request.

Mr. Houston: Q. Or is it your position that

it is up to the Negro student to hunt around and decide where to go, and then you give him the money? A. Pending full development of the University. You can't create an institution or a law department in a day. Pending the full development of the school, the State is doing the best thing it can do in view of its well known policy to furnish the tuition of the student in another school where he would be happy, where he would get what he needed and would have an equal opportunity to get an education.

Q. But do you know that the State does not furnish the tuition? A. I don't know about that. I have heard the dispute here. I see there is some difference of opinion here,—that if he would have to pay \$50 here for tuition and only a certain amount more at the other place that the certain amount more would make him whole.

Q. That is your interpretation? A. Although I have not known of that situation and have not given it any consideration.

(Witness excused.)

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Mr. Hogsett: I would like to recall Dean Masterson for further cross examination.

And now W. E. MASTERSON, being recalled, was duly produced and further examined, testifying as follows, to-wit:

*W. E. Masterson Recalled*

Mr. Hogsett: Q. Dean, in the light of the examination of Dr. Elliff about the establishment of a law school at Lincoln University,—I wanted to



ask you, as an educator and as Dean of the Law School here what, in practical effect, would have to be done to set up a law school at Lincoln University for the instruction in law of one or two students. Just tell us what you would do if you were setting out to do that. A. You must first have a library, of course. I understand they have that. Second, you would have a place for meeting the student and reciting with him. I understand they have that. Then, of course, you must have competent instruction to teach a full year curriculum. That would require, I should say, two teachers of law. That would give them just about the amount of law that the individual instructor on the faculty here has at this University.

Q. Now at what expense could a law school be established in Lincoln University for the instruction in Law of one or two students, to give them such law school and standard of training equal to that in the Missouri University Law School? A. Since you have the library there and the buildings,—about the only item of expense would be the salaries of those two instructors.

Q. What would that be, to get men of equal grade with what you have in Missouri University?

A. I should say that you could get very excellent teachers of Law varying from \$3500 to \$5000 a year.

Q. Assuming the top figure, could you establish a Law School in Lincoln University for the instruction of one or two students and on a level of scholarship and training equal to that in Mis-

Missouri University for a maximum of \$10,000 a year?  
A. I think so.

Q. If, on the other hand, a Negro were admitted into the Law School of the University of Missouri, and educated in a separate class in accordance with the public policy of the state, would not that expense to the State of Missouri, to supply separate instruction in the Missouri University Law School be as great as it would to establish it in Lincoln University? A. It would, because our present teaching staff already have full classes. If we gave additional instruction, in separate classes, it would require two extra teachers.

Q. If there was a demand made upon Lincoln University Board of Curators to establish a law school in Lincoln for one or two men students, and capable men of the kind you have been talking about would be employed to instruct that one or two students, would they not, having the entire time and attention of their instructors, receive at least as adequate instruction, if not better,— A. They would receive—

Q. Than if they were members of a class of forty students? A. They would receive much better instruction.

Q. In the ordinary routine of instructing a class of forty students or thirty to fifty students, a student, in the nature of things, cannot recite often, can he? A. He cannot.

Q. But with one or two students having the attention of the instructor, he would be practically having a private tutor? A. He would.

Q. Is that of value to a student? A. Of great value.

*Re-re-direct Examination of W. E. Masterson*

Mr. Houston: Q. How did you get the idea that you didn't need a library if you are going to have a law school at Lincoln University? A. I said there would have to be a library.

Q. How did you get the idea they could have a school there without a library? A. You have the Library of the Supreme Court, which is accessible to these students.

Q. Do you mean to tell me that the Association of American Law Schools would recognize a law school that didn't have its own library?

Mr. Hogsett: That does not matter.

Mr. Williams: The only thing we are concerned with here is the education of this relator and whether he is denied equal protection. The only test of that is, what sort of an education he is going to get. The requirements as to the grade of a law school according to an association is one thing, but that does not affect, as has been shown here, the character of the education that the student gets. We are concerned here with the education of this relator. He says that he is not going to get the kind of education that he should and is denied equal protection. We say to him and are trying to prove, and think we have established, that he is getting an education equal to or better than an education that he would get by coming to Missouri University. Now the requirements set up among the law schools most certainly is not of the essence that goes to the subject mat-

ter of the Fourteenth Amendment. It does not necessarily follow that membership in an association of law schools would have any effect upon the education this man would get. It is wholly immaterial to the question of whether or not the law school that would be established at Lincoln University would give this man the same high grade of education he would get here,—or even better because of the fact that he is the only man who wants it. What we do say is that the State, in its generosity in giving this man his education, should not have to take into consideration whether the law school is to be in the organization or association of law schools. Isn't the test whether or not this student if he did the work, would be qualified as well as he would be if he came out of the best law school in this state, or the United States? As to whether or not this law school at Lincoln would be admitted to the Association of Law Schools would not raise the 14th Amendment. Missouri is not required to give this man a law school that will be admitted to an association of law schools. We are required not to discriminate against him in the education that he gets. Therefore, it is entirely immaterial, and is far afield.

Mr. Houston: Q. Let me ask a few preliminary questions, first. Have you been over to the State Law Library at Jefferson City and used it? A. I have walked around through it, but I have not used it.

Q. You haven't examined it critically? A. No.

Q. You don't know how it compares with the



library here at the University? A. Only as to size.

Q. Well, "size" does not make a library?

The Witness: Is this the library used by the Supreme Court?

Mr. Hogsett: Yes.

The Witness: Well, we can assume they keep it up to date and have a standard, good law library.

Mr. Houston: Q. But you don't know whether it is up to the standard of the University of Missouri Law Library? A. Yes, sir.

Q. Is the library here, and the room, for the use of the students and faculty? A. Primarily, but lawyers may come into it.

Q. On the other hand, the law library at the capital would not be run for the benefit of the student of Law in Lincoln University? A. I assume not, but I don't know. That is not under my jurisdiction.

Q. The law library of the University of Missouri is under the immediate control of the Faculty of Law, is that correct? A. Well, under the immediate control of the general University Librarian, with recommendations from the Law Faculty as to its conduct and upkeep.

Q. Do you know how far the State Library at Jefferson City is situated from the campus of Lincoln University? A. Not at all.

Q. You know nothing about the accessibility of the Library so far as Lincoln University is concerned, at all? A. No.

Q. Then why did you make the statement

that Lincoln University would not need a law library in case one student over there wanted Law? A. It was brought out in testimony here by somebody that those Negro students could use that library if they wanted to.

Q. Do you know about the distance? A. Somebody said it was four blocks.

Q. But you don't know? A. No, I don't know.

Mr. Hogsett: He said it was based on testimony here in court.

Mr. Houston: Who testified it was four blocks?

Mr. Hogsett: Mr. Elliott.

The Court: I don't think the matter of where the Supreme Court Library is or is not has anything to do with this. If you want to question him as to what it would take to have a School at Lincoln, you can question him on that; but I don't think the Supreme Court Library has anything to do with it.

Q. If a library were set up which conformed to the requirements of the American Association of Law Schools, it would cost over fifty thousand dollars, is that true? A. I can't answer that question. I would have to do quite a lot of figuring in connection with our law library here.

Q. Well, you know it would have to be ten thousand volumes? A. Yes, it must have that many volumes.

Q. Considering the volumes that would be out of print, or something,—you, as a legal educator, know it would average \$5 a volume? A. Some

of those volumes we haven't, ourselves.

Q. Could you duplicate the University of Missouri library for fifty thousand dollars? A. I could not say,—I don't know.

Q. What is your best opinion as the Dean of an approved Law School? A. Well, I think I would have to have a little time, with a pencil and piece of paper and 20 or 30 minutes.

Q. Then may we ask for the answer, after this 20 or 30 minutes? It is also quite true that one of the advantages of the Association school is to transfer back and forth, as the student desires? A. That is right.

Q. So, if, for any reason, the work at Lincoln University would be unsatisfactory, an Association school could not accept this student as a transferee, coming from a non-Association school? A. That is the general rule.

Q. And some of the greatest value of your instruction in Harvard was the class-room instruction, that is true? A. That has a great deal of value, yes. Some of the great disadvantage of the instruction that you refer to was the infrequency with which the student was called upon to recite.

Q. But that didn't keep him from taking part in the discussions? A. No, he could talk out.

Q. And that participation depended on himself? A. Well, of course, he could not monopolize it.

Q. Within reasonable limits? A. Yes, sir.

Q. And that was a very valuable part of the training? A. Yes, but you would get more with two or three students in the class.

Q. But if you had only one student, you would lose all that? A. What he would lose from the discussion is not relevant because he would get it from the instructor more directly and it would be time-saving, because, you know, yourself, when you were in the Harvard Law School, a great many questions were sheer nonsense.

Q. But sometimes it was the "nonsense" that made you learn, wasn't it?

The Court: Well, let us get along. The Court is pretty well informed on that.

To which ruling of the Court, the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

(Witness excused.)

And the respondents recalled as a witness N. T. GENTRY, who, being duly produced and examined, testified further as follows:

*N. T. Gentry, Recalled*

Mr. Cave: Q. Judge Gentry, I believe you said you had been a member of the Supreme Court of the State of Missouri and Attorney General of the State of Missouri? A. Yes, sir.

Q. And during your active practice—

The Court: Are you going to ask Judge Gentry some more about this Supreme Court library?

Mr. Cave: I want to ask him about the size of it and the books that are there in. He has raised that question. This witness is one who knows.



Mr. Houston: We can trust Your Honor to eliminate the irrelevant.

Mr. Cave: Unless they will admit it is a good one, we want to prove it.

Mr. Cave: Q. I will ask you whether or not the library maintained in the Supreme Court building is an excellent law library, with law reports and decisions from each state in the Union and from England and Canada; and textbooks and digests of various kinds? A. Yes, sir.

Q. How would you say it compares with the law library at the University of Missouri? A. I think it is a larger and better law library. I frequently go over there to consult text books and reports that I don't find in the University law library.

Mr. Houston: Q. When court is not in session, is it open at night? A. Yes, I have been there at ten o'clock at night.

Q. You were a Judge? A. I was not then.

Q. Is it open to the public at night? A. Yes, sir; I have seen various lawyers there at night.

Q. When court was not in session? A. Yes, sir.

(Witness excused.)

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Mr. Hogsett: Respondents rest.

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### RELATOR'S REBUTTAL

The relator, in rebuttal, offered and introduced

evidence as follows, to-wit:

Mr. Houston: May it please the Court, from the Bulletin of the University of Kansas, marked Respondents' Exhibit 9, I call your attention to page 110, the following language: (reading) "Especial emphasis, however, is——"

The Court: Was that offered by the respondents?

Mr. Hogsett: Yes, Your Honor. Well, maybe not. You had better make your offer.

Mr. Houston: (Reading) "Especial emphasis, however, is placed upon the study of Kansas court decisions, statutes, and methods of practice."

In Respondents' Exhibit No. 12, from the Bulletin of the University of Iowa, the statement on page 295, (reading) "Special attention is given to the needs of students who intend to practice in Iowa."

Mr. Hogsett: May I call to the Court's attention the following: (reading from pages 294 and 295 of the same exhibit) "The primary purpose of the school is to prepare students for the general practice of law in any jurisdiction where the system of Anglo-American law prevails, to promote legal scholarship and research, and to develop an adequate understanding of the relation of law to the other social sciences."

Mr. Houston: And then follows the statement that "special attention is given to the needs of students who intend to practice in Iowa."

Mr. Houston: Now from Respondents' Exhibit 11, it states—page 12—"Under the statutes

of Nebraska, admission to the Bar is to be had in the Supreme Court only, and is governed by rules established by that court. Graduates of the College of Law of the University of Nebraska are admitted to practice in Nebraska upon motion, without examination other than that prior to graduation."

Mr. Hogsett: From the University of Kansas Bulletin, we will offer the sentence, "The curriculum is so planned as to prepare for practice in any jurisdiction."

Mr. Houston: Then we should like to offer in evidence the Bulletin of the State University of Iowa, marked Relator's Exhibit U, page 7, (reading, "The Iowa Law Review, published quarterly, is devoted to the scientific study and investigation of the law, and gives particular attention to problems of interest to the Bar of Iowa.")

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Said Relator's Exhibit U, offered as aforesaid, is in words and figures as follows, to-wit:

(Clerk here copy)

And now, further in rebuttal, the relator recalled as a witness **ROBERT L. WITHERSPOON**, who, being duly produced and examined testified as follows, to-wit:

*Robert L. Witherspoon, Recalled*

Mr. Houston: Q. Do you know the Eden Theological Seminary at Webster Groves near St. Louis? A. I do.

Q. What kind of school is it? A. It is a theological seminary.

Q. Do you know whether both white and Negro students matriculate there? A. I do.

Q. Do you know anything about the living accommodations? A. I do know that the white and colored live in the same dormitory.

Mr. Hogsett: Q. Is that a public or private school? A. It is a private school.

(Witness excused.)

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Mr. Houston: Relator rests.

And here the relator closed his case.

And here the respondents closed their case.

And this is all the evidence in the case.

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And now this cause was submitted and taken under advisement by the court until a day later in this term of court, with leave to the parties relator and respondent to submit briefs.

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And thereafter, on Friday, the 24th day of July, 1936, the same being also one of the days of the regular June, 1936, term of this court, the



following proceedings were had herein, to-wit:

Messrs. Murray and Hulen appeared for respondents. No appearances for relator.

The Court announced receipt by mail on July 15, 1936, from counsel for relator of requested finding of facts and requested conclusions of law, same being, respectively, in words and figures as follows, to-wit:

### FINDING OF FACTS

(Caption omitted)

Requests having been made for a finding of facts separate from conclusions of law, the Court in compliance therewith does find from the evidence:

1. That Lloyd L. Gaines is a Negro citizen of the United States and the State of Missouri, resident in the City of St. Louis; twenty-four years of age, and has resided in the State of Missouri for the last ten years; and is a taxpayer.

2. That he desires to study law at the University of Missouri School of Law, and is mentally and morally qualified for admission to the first year class of the School of Law according to the rules and regulations pertinent thereto.

3. That in August, 1935, he applied to respondent S. W. Canada, Registrar of the University of Missouri for admission to the School of Law. The transcript was duly forwarded and Canada telegraphed him suggesting that he communicate with President Florence of Lincoln University regarding possible arrangements and fur-

ther advice. President Florence wrote Gaines about the provisions for state scholarships for Negro students to study outside the state the same subjects offered at the University of Missouri and not offered at Lincoln. Gaines did not apply for a scholarship but persisted in his attempt to matriculate in the School of Law of the University of Missouri.

4. That before applying for admission to the School of Law of the University of Missouri Gaines had made inquiries of the law schools of several other state universities but had decided that since he was planning to practice in Missouri the School of Law of the University best offered him what he wanted; that the School of Law of the University of Missouri through student editor work offered the opportunity to do special research in Missouri law and he felt he would become more familiar with Missouri law and procedure attending the School of Law of the University of Missouri than any other law school. He did not believe it was against the law to admit a Negro to the University of Missouri School of Law. He is ready and able to pay the tuition fees and conform to the uniform regulations governing students in said School of Law.

5. On March 27, 1935, the Board of Curators formally rejected Gaines' application under the following resolution:

"WHEREAS, Lloyd L. Gaines, colored, has applied for admission to the School of Law of the University of Missouri, and

"WHEREAS, the people of Missouri,

both in the Constitution and in the statutes of the State, have provided for the separate education of white students and Negro students, and have thereby in effect forbidden the attendance of a white student at Lincoln University, or a colored student at the University of Missouri, and

"WHEREAS, the Legislature of the State of Missouri, in response to the demands of the citizens of Missouri has established at Jefferson City, Missouri, for Negroes, a modern and efficient school known as Lincoln University, and has invested the Board of Curators of that institution with full power and authority to establish such departments as may be necessary to offer to students of that institution opportunities equal to those offered at the university, and have further provided, pending the full development of Lincoln University, for the payment, out of the public treasury, of the tuition, at universities in adjacent states, of colored students desiring to take any course of study not being taught at Lincoln University, and

"WHEREAS, it is the opinion of the Board of Curators that any change in the State system of separate instruction which has been heretofore established, would react to the detriment of both Lincoln University and the University of Missouri,

"THEREFORE, BE IT RESOLVED, that the application of said Lloyd L. Gaines

be and it is hereby rejected and denied, and that the Registrar and the Committee on Entrance be instructed accordingly."

Thereupon April 15, 1935, Gaines filed the instant suit.

6. The University of Missouri is a public institution, operated and controlled by the board of curators, a body corporate, as an administrative agency of the State of Missouri. The School of Law is an integral part and division of the University. Admission to the School of Law is in the hands of the respondent S. W. Canada, Registrar, as agent of the Board of Curators. The University admits students of every race, both resident and foreign, except students of African descent.

7. The School of Law of the University of Missouri is the only public institution in the State of Missouri offering a degree in law or preparing students for the practice of the profession of the law.

8. Lincoln University is under the control of a board of curators who by the Laws of 1921, p. 86, were given the same powers as the board of curators of the University of Missouri and authorized and directed to reorganize the institution so that it should afford Negroes opportunity for training up to the standard furnished at the University of Missouri, to purchase additional land and necessary buildings. By the same act it was further provided that pending the full development of Lincoln University the board of curators



should have the authority to arrange for the attendance of Missouri Negroes at the university of any adjacent state to take any subject or course offered at the University of Missouri but not at Lincoln and to pay the reasonable tuition fees for such attendance; provided that whenever the board of curators deemed it advisable they should have the power to open any necessary school or department.

9. "That Lincoln University does not now and never has offered any graduate or professional instruction; specifically, no instruction in law; that the only instruction offered is undergraduate collegiate instruction. At present a survey is being made by the board of curators with a view of possible expansion of the university, but no program of expansion has been agreed upon. No money is available to finance a program of expansion; and this coming school year the University officials will have to turn away some girl applicants for lack of space in the girls' dormitories. The University will wind up the present fiscal biennium with a deficit even without any expansion.

10. The scholarship provisions have never been administered by the board of curators of Lincoln University as provided in the Act of 1921, but have been administered by the office of the State Superintendent of Education. Down to 1936 the entire tuition of the Negro student was paid in the university of the adjacent state, but beginning this year under the interpretation of the appropriation Act of 1935, the state pays only the differential between the cost of the tuition in the

adjacent state university and the cost of tuition for the same course or subject at the University of Missouri. If the cost of the tuition at the adjacent state university is lower than that of the University of Missouri, the Negro student gets nothing.

11. Gaines did not apply to the board of curators of Lincoln University demanding either that a law school be established for him at Lincoln University or that he be given a scholarship as provided under the Act of 1921, *supra*.

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*Judge.*

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## CONCLUSIONS OF LAW

(Caption omitted)

The Court declares the law to be:

1. The University of Missouri is a public institution operated by the State of Missouri by and through its agency the Board of Curators, a body corporate; that there is no valid prohibition in the Constitution or statutes of the State of Missouri against a Negro Citizen of Missouri, otherwise fully qualified, from attending the School of Law of the University of Missouri on the ground he is a Negro.

2. The Board of Curators of the University of Missouri, a body corporate, and the agent of the Board, the Registrar of the University, are under a plain, legal duty not to refuse admission to a Negro student, resident of Missouri, other-

wise fully qualified, to the School of Law of the University of Missouri, on the ground of race or color; and rejection of such qualified Negro student on the ground of race or color violates the Constitution of the State of Missouri and the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

3. Mandamus will lie against the said Board of Curators and the said Registrar to compel the admission of an otherwise fully qualified Negro student, resident of Missouri, to the School of Law of the University of Missouri upon his paying the uniform fees and meeting the uniform requirements governing admission to the first year class of said School, at its next regular matriculation period, where said Negro has been rejected solely on account of race or color.

4. The respondents admitting of record that relator is mentally and morally qualified for admission to the first year class of the School of Law of the University of Missouri, the burden of proof is on them to show legal authorization for excluding him solely on the ground of color. The respondents have not sustained the burden of proof on this issue.

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*Judge.*

And now the Court refused to give said finding of facts, so requested by relator as aforesaid; to which ruling of the Court the relator, by his

counsel, then and there at the time duly excepted and saved his exceptions.

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And now the Court refused to give said declarations of law, so requested by relator as aforesaid; to which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

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The finding of the Court is for the respondents and against the relator and the writ of mandamus is quashed.

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To which ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

---

And now the Court caused its finding, decree and judgment to be entered herein as is fully set out in the record proper, q. v.

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And now on the same day and at the same term comes relator and files his motion for a new trial herein, which motion is now by the parties presented to the court, and the court being fully advised doth now order that said motion for a new trial be and the same is now overruled, to which ruling and order relator excepts.

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And now upon application of relator it is by the court ordered that the relator may file his bill of exceptions within the time provided by law.

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And now on the same day and at the same term comes relator and files his application and affidavit for an appeal from the judgment herein to the Supreme Court of Missouri, which application is now by the court sustained and an appeal is now by the court allowed to the relator from the judgment herein to the Supreme Court of Missouri.

And now, on said 24th day of July, 1936, same being also within four days after finding, decree and judgment herein, and at the same term thereof, the relator filed his motion for a new trial, same being in words and figures as follows, to-wit:

### MOTION FOR A NEW TRIAL

(Caption omitted)

Comes now the relator, within four days after the rendering of the verdict and judgment and yet within the same term, and moves the Court to set aside its verdict and judgment and grant him a new trial in the above styled cause for the following reasons:

1. The verdict and judgment of the Court are for the wrong party.
2. The verdict and judgment of the Court are against the weight of the evidence and contrary to the law.
3. The Court erred in refusing the finding of facts and conclusions of law offered by relator.
4. The verdict and judgment of the Court are contrary to and in violation of Section 30, Article 2 of the Constitution of the State of Missouri for the reason that they deprive relator of his property without due process of law.

5. The verdict and judgment of the Court are contrary to and in violation of the 14th amendment of the ~~Constitution~~ Constitution of the United States for the reason that they deprive relator of his property without due process of law and of the equal protection of the law.

6. The Court erred in its finding of facts and conclusions of law.

7. The Court erred in holding that mandamus would not lie against the respondents to compel them to admit relator into the School of Law of the University of Missouri.

S. R. REDMOND,

CHARLES H. HOUSTON,

HENRY D. ESPY,

*Attorneys for Relator.*

Which motion for a new trial, filed by relator as aforesaid, was by the Court now duly seen and heard, and was by the Court overruled; to which action and ruling of the Court the relator, by his counsel, then and there at the time duly excepted and saved his exceptions.

And now, also, on the 24th day of July, 1936, the same being one of the days of the regular June, 1936, term of this court, the relator filed his application and affidavit for an appeal herein, same being in words and figures as follows, to-wit:

# APPLICATION AND AFFIDAVIT FOR APPEAL

(Caption omitted)

*State of Missouri, City of St. Louis, ss.*

Lloyd L. Gaines, being duly sworn, makes oath and says that the appeal prayed for in the above entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the Court.

Lloyd L. Gaines.

Subscribed and sworn to before me this 24th day of July, A. D. 1936.

Arnett G. Lindsay,

Notary Public

(SEAL)

My commission Expires April 16th, 1937.

And now the relator was by the Court given leave to prepare and file his Bill of Exceptions herein within the time allowed by law.

And now the relator was by the Court granted an appeal herein to the Supreme Court of the State of Missouri, as prayed.

And now, within the time allowed by law, comes the relator, by his counsel, and presents this his Bill of Exceptions herein and prays the Court to sign, seal, allow, settle and file the same and make it a part of the record in this cause.

And this is accordingly done on this the 5th day of October, 1936.

W. M. DINWIDDIE,  
*Judge of the Circuit Court, County  
of Boone, State of Missouri.*

This Bill of Exceptions is hereby approved and agreed to:

S. R. REDMOND,  
CHARLES H. HOUSTON,  
HENRY D. ESPY,  
*Counsel for Relator.*

FRED L. WILLIAMS,  
WILLIAM S. HOGSETT,  
N. T. CAVE,  
*Counsel for Respondents.*

On July 27, 1936, appellant caused to be filed in the office of the clerk of the Supreme Court of Missouri a certified copy of the record entry of the judgment appealed from in this cause, showing the term, day of the term and month and year when the same was rendered, together with the order of the Court granting the appeal herein and the docket fee of ten (\$10.00) dollars was paid to said clerk and said cause is now pending on appeal in said Court.

The foregoing is submitted by appellant as and for an abstract of the record in this cause.

S. R. REDMOND,  
CHARLES H. HOUSTON,  
HENRY D. ESPY,  
*Attorneys for Appellant.*



[fol. 209] And thereafter, and on the 18th day of May 1937, the following further proceedings were had and entered of record in said cause, to-wit:

35286

STATE ex Rel. LLOYD L. GAINES, App.

vs.

S. W. CANADA, etc., et al., Resps.

Come now the parties, by their respective attorneys, and after arguments herein submits this cause to the court.

And thereafter, and on the 9th day of December, 1937, the following further proceedings were had and entered of record in said cause, to-wit:

STATE OF MISSOURI, at the Relation of LLOYD L. GAINES,  
Appellant,

vs.

S. W. CANADA, Registrar of the University of Missouri,  
and the Curators of the University of Missouri, a Body  
Corporate, Respondents

Appeal from the Circuit Court of Boone County

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Boone County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondents recover against the said appellant their costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion of the court is in words and figures following, to-wit:

[fol. 210] IN THE SUPREME COURT OF MISSOURI, EN BANC,  
SEPTEMBER TERM, 1937

No. 35286

STATE OF MISSOURI at the Relation of LLOYD GAINES,  
Appellant,

vs.

S. W. CANADA, Registrar of the University of Missouri,  
and the Curators of the University of Missouri, a Body  
Corporate Respondents

Action in mandamus to compel the registrar and the curators of the University of Missouri to admit relator, a negro, as a student in the School of Law in the University of Missouri. The action was tried in the Circuit Court of Boone County. On final hearing the alternative writ was quashed and a peremptory writ was denied. Relator appealed.

The unchallenged pleadings sufficiently present the issues urged on this appeal.

Appellant, a young man twenty-five years of age, is a citizen of Missouri, and resides in the City of St. Louis. He was educated in the public schools maintained by the state for the education of negroes including education in the common school, high school and Lincoln University. He was graduated from the Lincoln University in August, 1935, with an A. B. degree, and thereupon made application for admission as a student in the School of Law in the University of Missouri. Respondents denied such application on the ground that it is contrary to the constitution, laws and public policy of the state to admit a negro as a student in the University of Missouri.

Other necessary facts will be stated in connection with the questions discussed.

[fol. 211] At the trial below, it was admitted that appellant's work and credits at the Lincoln University would qualify him for admission to the School of Law of the University of Missouri if he were found otherwise eligible.

Appellant contends that the constitution, laws and public policy of the state entitle him to admission as a student in the Law Department of the University of Missouri.

Section 3 of Article XI of the Constitution of Missouri provides as follows:

"Separate free public schools shall be established for children of African descent."

Section 9216 R. S. 1929 provides:

"Separate free schools shall be established for the education of children of African descent; and it shall hereinafter be unlawful for any colored child to attend any white school, or for any white child to attend a colored school."

Section 9217 R. S. 1929 makes the following provision:

"When there are within any district in the state eight or more colored children of school age, as shown by the last enumeration, the board of directors of such school district shall be and they are hereby authorized and required to establish and maintain within such school district a separate free school for said colored children or in lieu thereof shall pay the transportation and the tuition charges to any district in the county wherein a school is maintained for colored children. Provided if the number of colored children enumerated is less than eight they shall have the privilege and are entitled to attend school in the nearest district in the county wherein a school is maintained for colored children and the transportation and tuition charges incurred shall be paid."

[fol. 212] Without enumerating the provisions of Sections 9346, 9347, 9348 and 9349 R. S. 1929, it will be sufficient for present purposes to state that such statutes provide separate high school facilities for colored students equal to those provided for white students.

The public policy of a state is evidenced by the constitution, statutory laws, course of administration and decisions of the courts of last resort of the state. It is clear that the constitutional and statutory provisions to which we have called attention provide separate public schools for the education of colored children. In the administration of these

constitutional and statutory provisions, separate schools have been established and maintained for that purpose. This court has held that the constitution and laws of this state providing separate schools for colored children are not forbidden by, or in conflict with, the Fourteenth Amendment of the Federal Constitution, and do not deprive colored children of any rights. *Lehew v. Brummell*, 103 Mo. 546, 552, 15 S. W. 765. It follows, therefore, that the established public policy of this state has been and now is to segregate the white and negro races for the purpose of education in the common and high schools of the state. Appellant contends, however, that the public policy of the state does not require the separation of the races for the purpose of higher education. That question we take next.

There is no express constitutional provision requiring that the white and negro races be separated for the purpose of higher education. Neither is there any constitutional prohibition against such a separation. Our state constitution is not a grant but a limitation on legislative power, so the legislature may enact any law not expressly or impliedly prohibited by the Federal or State Constitution. *State ex rel. McDonald v. Lollos*, 326 Mo. 644, 33 S. W. (2d) 98; *State ex rel. Crutcher v. Koeln*, 332 Mo. 1229, 61 S. W. (2d) 750; *State v. Dixon*, 335 Mo. 378, 73 S. W. (2d) 385. It must follow, therefore, that since there is no constitutional prohibition against the separation of the white and negro races for [fol. 213] the purpose of higher education, the legislature has authority to enact laws providing for such separation. This conclusion brings us to two questions, (1) has the legislature enacted laws providing for the separation of the two races for the purpose of higher education? and (2), if so, do such laws run counter to any constitutional provision, State or Federal?

The laws enacted by the legislature of this state providing higher education for the negro are fairly summarized in respondents' brief as follows:

"In 1870 the General Assembly enacted a statute entitled 'An Act establishing a State Normal School for colored teachers', wherein it was provided that the 'the Lincoln Institution, at Jefferson City, is hereby constituted a State Normal School, for the purpose of training colored teachers for public schools' (Laws, 1870, p. 136). This statute, enacted five years after the close of the Civil War, is the first



statute providing higher education for negroes. This Statute was carried forward as Section 7176, R. S., 1879. To this statute was added Section 7177, R. S., 1879, providing that the foregoing section "shall not be so construed as to affect or abolish the Lincoln Institute or in anywise to interfere with the objects as contemplated by the original articles of incorporation, but said State Normal School shall be considered as a normal department in said institution for the education of colored teachers for public schools."

"In 1887 the General Assembly enacted a statute entitled "An Act to establish an academic department in connection with Lincoln Institute *for the higher education of the negro race,*" which statute established in Lincoln Institute an academic department for such higher education, including a college and preparatory school for said college; and authorized the board of regents "*as the growing necessities of this department may demand to introduce such studies as are pursued in the academic department of the State University,*" with power to employ necessary instructors (Laws, 1887, p. 270). This statute was carried forward as Sections 8140 and 8141, R. S., 1889.

"In 1891 the General Assembly enacted a statute establishing an industrial school as a department of Lincoln Institute, "in order that *the negro youths of this state* may receive instruction in those branches of study relating to agriculture and mechanic arts, and thereby fit themselves to engage in the useful trades". This statute further provided for an equitable division of certain federal grants of money between the agricultural and mechanical college and School of Mines and Metallurgy "*established exclusively for the benefit of white students,*" and the agricultural and mechanical college at Lincoln Institute established "*for the exclusive benefit of colored students*" (Laws 1891, pp. 22-23, Secs. 1 and 6). This act greatly enlarged the scope of education provided for negroes at Lincoln Institute. The act demonstrates that the State of Missouri was aware of the growing need for negro education and was responding to the obligation to provide it. This act was carried forward through subsequent revisions to and including the Revision of 1919 (R. S. 1919, Secs. 11511 to 11521, inclusive).

"In 1921 the present Lincoln University Act was enacted (Laws, 1921, page 86). The title of that act is most significant as indicating the legislative intent, and, therefore, the

public policy of the State, in this matter. The title, in part, reads as follows:

"An Act to repeal Article XVIIa, Revised Statutes of Missouri, 1919, \* \* \* and to enact a new article in lieu thereof \* \* \*, the same to provide for the organization and scope of the Lincoln University *for the higher education of the negro race*."

This same public policy is reiterated and emphasized in the body of the act, particularly in Section 3 thereof, where [fol. 215] it says that "the Board of Curators of the Lincoln University shall be authorized and required to reorganize said institution *so that it shall afford to the negro people of the state opportunity for training up to the standard furnished at the State University*" (Sec. 9618, R. S., 1929). This policy as to segregation of the races in higher education is still further clearly fixed by Section 7 of the Act providing that "pending the full development of the Lincoln University" the board of curators shall have authority to arrange for the attendance of "negro residents of the state" at the university of any adjacent state to take courses of study provided at the state university but which are not taught at Lincoln University and to pay the reasonable tuition fees for such attendance. (Sec. 9622, R. S., 1929)."

All of the foregoing statutes show a clear intention on the part of the legislature to separate the white and negro races for the purpose of higher education. The provisions of the 1921 Lincoln University Act, if it stood alone, would leave no doubt on that subject. Sections 3 and 7 of that act (now sections 9618 and 9622 R. S. 1929) are couched in language too plain to be misunderstood.

The provisions of section 9618 evidence a clear intention on the part of the legislature to give to the negro and white people of the state equal opportunity for higher education, but in separate schools. Why provide by section 9618 that Lincoln University, a negro school, should be reorganized so that it would afford the negro people of the state opportunity for training up to the standard furnished at the University of Missouri, if the negroes already had, or if the legislature intended they should have the opportunity for training at the University of Missouri by becoming a student therein? The answer is obvious. It is clear that the legislature intended to bring the Lincoln University up to the

standard of the University of Missouri, and give to the whites and negroes an equal opportunity for higher education—the whites at the University of Missouri, and the negroes at Lincoln University.

The provisions of section 9622 to the effect that negro [fol. 216] residents of this state may attend the university of any adjacent state with their tuition paid, pending the full development of Lincoln University, makes it clear that the legislature did not intend that negroes and whites should attend the same university in this state.

Appellant contends that section 9657 R. S. 1929 opens the doors of the University to negroes. This statute reads as follows:

“All youths, resident of the state of Missouri, over the age of sixteen years, shall be admitted to all the privileges and advantages of the various classes of all the departments of the university of the state of Missouri, without payment of tuition: \* \* \* *and provided further*, that nothing herein enacted shall be construed to prevent the board of curators from collecting reasonable tuition fees in the professional departments, and the necessary fees for maintenance of the laboratories in all departments of the university, and establishing such other reasonable fees for library, hospital, incidental expenses or late registration as they may deem necessary. (R. S. 1919, Sec. 11554).”

Appellant seems to hang his contention on the words “all youths.” The argument appears to be that when the legislature provided that all youths, residents of the State of Missouri, over the age of sixteen years, should be admitted to the privileges and advantages offered by the University of Missouri without payment of tuition, it intended by the use of the words, all youths, to include negro as well as white youths. Such a construction of this statute, standing alone, would be at war with the provisions of the act of 1870, the act of 1887, the act of 1891 and finally the present Lincoln University Act of 1921, the provisions of which we have heretofore pointed out, as evidencing a clear and unmistakable intention on the part of the legislature to separate the races for the purpose of higher education.

What is now section 9657 was first enacted in 1872. The 1872 act provided that “all youths” resident of the State of Missouri between certain ages should be admitted to the privileges of the University of Missouri upon payment of a

[fol. 217] tuition fee of ten dollars, and such fees as the board of curators might establish, not to exceed five dollars per term. This section was amended through the years and now appears as section 9657. It now provides that all youths residents of the State of Missouri, over the age of sixteen years, shall be admitted to all the privileges of the University of Missouri without payment of tuition, but authorizes the board of curators to exact the payment of fees in certain named departments.

This statute deals with the question of tuition and fees to be paid for higher education. It must, therefore, be read and construed in connection with all other statutes dealing with the subject of higher education. The legislature could have had no purpose in adopting the 1887 Act, the 1891 Act and finally the 1921 Lincoln University Act, all providing for the development and reorganization of the Lincoln University, "so that it shall afford to the negro people of the state opportunity for training up to the standards furnished at the State University of Missouri", if, as appellant contends, the prior Act of 1872 gave them opportunity for higher education at the University of Missouri. The history of the Act of 1872 (now section 9657) when read in connection with later enactments providing for higher education of the negro at Lincoln University forces the conclusion that the purpose of the Act of 1872 was to regulate tuition and fees to be exacted from those admitted to the University of Missouri, and not to define eligibility for admission. This construction of the 1872 Act is not only reasonable but it harmonizes with the statutes segregating the races for the purpose of higher education and effectuates the evident intention of the legislature.

It is urged that the refusal to admit appellant as a student in the University of Missouri denies him the equal protection of the laws, in violation of the equal protection clause of the Fourteenth Amendment.

We have held that the statute establishing separate schools for colored children does not violate the Fourteenth [fol. 218] Amendment. *Lehew v. Brummell*, 103 Mo. 546, 15 S. W. 765. In that case Brummell, a negro, had four children of school age residing with him in school district number four in Grundy County. No separate school was maintained in that district for the education of colored children.



There was such a separate school in the town of Trenton in the same county, which these colored children could have attended with transportation and tuition fees paid. The trial court perpetually enjoined these colored children from attending the school maintained for white children, in district four. On appeal we affirmed the judgment of the trial court. In so holding, we, among other things, said:

"But it will be said the classification now in question is one based on color, and so it is; but the color carries with it natural race peculiarities which furnish the reason for the classification. There are differences in races, and between individuals of the same race, not created by human laws, some of which can never be eradicated. These differences create different social relations recognized by all well-organized governments. If we cast aside chimerical theories and look to practical results, it seems to us it must be conceded that separate schools for colored children is a regulation to their great advantage".

In this same case we further said:

"The fact that the two races are separated for the purpose of receiving instruction deprives neither of any rights. It is but a reasonable regulation of the exercise of the right. As said in the case just cited, 'Equality and not identity of privileges and rights is what is guaranteed the citizen'. Our conclusion is that the constitution and laws of this state providing for separate schools for colored children are not forbidden by or in conflict with, the Fourteen Amendment of the Federal Constitution; and the courts of last resort in several states have reached the same result".

In *Plessey v. Ferguson*, 163 U. S. 537, 544, that court [fol. 219] spoke concerning race separation as follows:

"Laws permitting, and even requiring, their separation in places where they are liable to be brought in contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not uniformly, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced".

The right of a state to separate the races for the purpose of education is no longer an open question. Speaking to that question in *Gong Lum et al v. Rice et al*. 275 U. S. 78, 85, 86, the Supreme Court of the United States said:

"The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow or black. Were this a new question, it would call for very full argument and consideration, but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the federal courts under the Federal Constitution". (Citing many cases.)

Contention is made that the judgment of the court below upholding respondents' refusal to admit appellant as a student in the University of Missouri is violative of Section 30 of Article II of the Constitution of Missouri in that it deprived him of his property without due process of law.

The argument is that since appellant is a citizen and taxpayer of Missouri, he has a proprietary interest in the University of Missouri, and to refuse him admission as a student therein deprives him of such proprietary interest without due process of law in violation of Section 30 of Article II of the Constitution of Missouri. There is no question but what negro citizens and taxpayers of Missouri are entitled to school advantages substantially equal to those furnished white citizens of the state. However, equality and not identity of school advantages is what the law guarantees to every citizen, white or black. Since it is settled law that the mere separation of the races for the purpose of education deprives neither of any rights, the remaining question is whether or not the advantages for higher education offered to the negroes of the state are substantially equal to the advantages furnished white students. If they are, appellant is not deprived of his proprietary rights or any other right guaranteed to him by the State or Federal Constitution.

Appellant made no attempt to avail himself of the opportunities afforded the negro people of the state for higher

education. He at no time applied to the management of the Lincoln University for legal training. Had he done so it would have been the duty of the board of curators to either provide a law school for him at Lincoln University as provided in section 9618, or furnish him opportunity for legal training elsewhere, substantially equal to that furnished white students at the University of Missouri, as provided in section 9622. The universities of the adjacent states of Kansas, Nebraska, Iowa and Illinois, admit non-resident negroes as students in their law department. The law department of these universities, as well as the law department of the University of Missouri are schools of high standing. They are each members of the Association of American Law Schools, and each are on the approved list of the American Bar Association. Evidence offered by appellant shows that one desiring to practice law in Missouri can get as sound, comprehensive, valuable legal education in the law schools of Kansas, Nebraska, Iowa and Illinois, as in the University of Missouri. Appellant's evidence further shows that the system of education used in the law schools of the four adjacent states is the same as that used in the University of Missouri Law School, and is designed to give the student a basis for the practice of law in any [fol. 221] state where the Anglo-American system of law obtains; that the University of Missouri Law School does not specialize in Missouri law; that the course of study and case books used in the five schools are substantially identical; that students frequently transfer from one of these schools to the other, receive full credit for the work done in the former school, and pursue their course without loss of time. The record shows that out of 6966 cases in the case books used in the three-year course in the Missouri Law School, only 97 or 1.2% of all such cases are from Missouri.

The distance appellant would be required to travel from his home to these universities as well as the cost of transportation follows:

	Mileage	Transportation
"St. Louis to Columbia, Missouri	146	\$ 2.95
St. Louis to Champaign, Illinois	174	3.48
St. Louis to Iowa City, Iowa	299	5.98
St. Louis to Lawrence, Kansas	319	6.38
St. Louis to Lincoln, Nebraska	468	9.35

The record shows that white residents in some parts of Missouri travel farther to reach the University of Missouri at Columbia, than appellant would have to travel from his home in St. Louis to the university in either of the four adjacent states. A resident of Caruthersville, Missouri, would have to travel 367 miles, while a resident of Jefferson City, Missouri, would travel only 31 miles to reach the University of Missouri, yet, the Caruthersville resident could not claim he was discriminated against or assert that he was entitled to have a university located within 31 miles of his residence so that he and the Jefferson City resident would have equal opportunity to obtain a university education. "The law does not undertake to establish a school within a given distance of anyone, white or black". The difference in distances to be traveled, if not unreasonable or discriminatory, is but an incident to any classification for school purposes and furnishes no substantial ground for complaint. *Lehew v. Brommell*, 103 Mo. 546, 552, 15 S. W. 765; *People ex rel. King v. Gallagher*, 93 N. Y. 438, 451-2.

If plaintiff were permitted to attend Missouri University, [fol. 222] he would necessarily pay living expenses away from his home, the same as if he attended the university in either of the four adjacent states. If he attended the Law Department of either of the foreign universities, the State of Missouri would pay his attendance fees, which for the first year, would range from \$109.75 to \$178.00. If he attended the Law Department of the University of Missouri, he would be required to pay his attendance fees, which for the first year would be \$127.50.

The pertinent parts of the 1935 appropriation act read as follows:

"There is hereby appropriated out of the State Treasury chargeable to the general revenue fund for the years 1935 and 1936, the sum of Ten Thousand Dollars (\$10,000.00) to be used in paying the tuition of negro college students to some standard college or university not located in Missouri, \* \* \*; provided that the total amount paid shall not exceed the difference between the registration and incidental fees charged by the University of Missouri to resident students and the school attended for similar courses."

At the time appellant applied for admission to the Missouri Law School in August, 1935, there was an unexpended



balance of \$6,351.18 in this scholarship fund. On April 17, 1936, the amount remaining in this fund was \$2,214.98. It thus appears that there was ample funds on hand to pay appellant's tuition in the Law Department of the university in either of the four adjacent states for the years 1935 and 1936.

Appellant contends that Missouri would not pay his full tuition in an adjacent state, but only the difference between the tuition charged by the University of Missouri and that charged by the adjacent states, as provided in the appropriation act of 1935. The proviso in the 1935 act which attempts to limit the authority of the board of curators to the payment of the difference between the tuition in Missouri and in the adjacent states is unconstitutional and void. A general statute (Section 9622 R. S. 1929) authorizes the board of curators of Lincoln University to pay the [fol. 223] reasonable tuition fees of negro residents of Missouri for attendance at the university of any adjacent state. This statute cannot be repealed or amended except by subsequent general legislation. Legislation of a general character cannot be included in an appropriation bill. To do so would violate section 28 of Article IV of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. *State ex rel. Davis, v. Smith*, 335 Mo. 1069, 75 S. W. (2d) 828; *State ex rel. Hueller v. Thompson*, 316 Mo. 272, 289 S. W. 338. The valid and invalid portions of the statute are separable. If we disregard the invalid proviso there is left a complete workable statute which appropriates the sum of \$10,000 for the purposes therein named. Had appellant applied for the benefits of this appropriation, it would have been the duty of the board of curators of Lincoln University to pay his full tuition in the Law Department of the university of an adjacent state. However, if the proviso in the appropriation act were valid, and Missouri paid only the difference between the fees charged by the University of Missouri and the charges exacted by the adjacent state, that fact would not render the opportunity offered appellant for a law education in an adjacent state unequal to that offered by the University

of Missouri, because if appellant attended the Missouri University he would be required to pay the full tuition charges himself, the same as white students are required to do.

For all of the reasons stated, we hold that the opportunity offered appellant for a law education in the university of an adjacent state is substantially equal to that offered to white students by the University of Missouri.

Appellant cites many cases in support of his contentions. Among the cases cited in *Peason v. Murray*, 169 Md. 478, 182 Atl. 590, 103 A. L. R. 706, upon which he places much reliance. The facts in that case are so radically different from the facts in the instant case that we do not regard [fol. 224] that case as an authority in support of the contentions made in this case. It was held in the *Pearson* case that the negro was entitled to be admitted to the Law Department of the University of Maryland because the State of Maryland had made no provision for establishing a law school for negroes, and the provisions made for the legal education of negroes outside of the state were inadequate. In so holding that court said:

"But in Maryland no officer or body of officers are authorized to establish a separate law school, there is no legislative declaration of a purpose to establish one, and the courts could not make the decision for the state and order its officers to establish one. Therefore, the erection of a separate school is not here an available alternative remedy."

In Missouri the situation is exactly opposite. Section 9618 R. S. 1929 authorizes and requires the board of curators of Lincoln University "to reorganize said institution so that it shall afford to the negro people of the state opportunity for training up to the standard furnished at the state university of Missouri whenever necessary and practicable in their opinion." This statute makes it the mandatory duty of the board of curators to establish a law school in Lincoln University whenever necessary or practical. *Lincoln University v. Hackman*, 295 Mo. 118, 124, 243 S. W. 320. The statute was enacted in 1921. Since its enactment no negro, not even appellant, has applied to Lincoln University for a law education. This fact demonstrates the wisdom of the legislature in leaving it to the judgment of the board of curators to determine when it would be necessary

or practicable to establish a law school for negroes at Lincoln University. Pending that time adequate provision is made for the legal education of negroes in the University of some adjacent state, as heretofore pointed out.

The State of Maryland not only did not provide for the establishment of a law school for negroes whenever necessary or practicable but it failed to make adequate provision for their legal education elsewhere. In 1935 the legislature of Maryland made provision for fifty scholarships of \$200 each to negroes, to enable them to attend colleges outside [fol. 225] the state, mainly to give the benefit of college, medical, law, and other professional courses to the colored youth of the state for whom no such facilities were available in the State of Maryland. This law became effective June 1, 1935. On June 18, when the Pearson case was tried below, "three hundred and eighty negroes had sought blanks for applying for the scholarships, and one hundred and thirteen applications had been filled in and returned." From this situation, it is apparent that many of the negro applicants would not get a scholarship. Whether or not the negro in the Pearson case would get one was altogether problematical. The Maryland court held that such a provision for the professional education of negro students outside the State of Maryland was wholly inadequate. In so holding that court said:

"That any one of the many individual applicants would receive one of the 50 or more scholarships was obviously far from assured. For a large percentage of them there was no provision. . . ."

"The Court is clear that this rather slender chance for any one applicant at an opportunity to attend an outside law school, at increased expense, falls short of providing for students of the colored race facilities substantially equal to those furnished to the whites in the law school maintained in Baltimore."

The Court advanced other reasons why the opportunities afforded negroes for a legal education outside the State of Maryland was not equal to the opportunity furnished the whites in the law school maintained in Baltimore, but no such reasons are present in the instant case, as will be shown by a comparison of the record in the two cases.

As we read the Maryland case, it holds that the negro there involved was entitled to be admitted to the law school

maintained for the whites in Baltimore for two reasons, (1) because the state had not authorized the establishment of a law school within the state for negroes, and there was no legislative declaration of a purpose to do so, and (2) because the provision made for the legal education of negro [fol. 226] students in schools outside the state was wholly inadequate and not substantially equal to the opportunity afforded the whites within the state.

The opposite situation obtains in Missouri. First, there is a legislative declaration of a purpose to establish a law school for negroes at Lincoln University whenever necessary or practical. Second, pending the establishment of such a school, adequate provision has been made for the legal education of negro students in recognized schools outside of this state. For these reasons the Maryland case is not in point here. Many other cases are cited by appellant, but in our judgment, they have no bearing on this case in view of our constitutional and statutory provisions separating the races for the purpose of education, and as we have pointed out, making provisions for higher education of the negro substantially equal to the provisions made for the whites.

Other points are advanced by appellant but they are all included in the questions we have discussed and determined.

For all of the reasons stated the judgment below should be affirmed. It is so ordered.

William F. Frank, Judge.

All concur.

[fol. 227] And thereafter, and on the 18th day of December 1937, the following proceedings were had and entered of record in said cause, to-wit:

No. 35286

STATE ex Rel. LLOYD L. GAINES, App.,

vs.

S. W. CANADA, etc. et al., Resps.

Comes now the appellant, by attorneys, and files herein his motion for a rehearing.



Which said motion for rehearing is in words and figures following to-wit:

[fol. 228] IN THE SUPREME COURT OF MISSOURI, EN BANC,  
SEPTEMBER TERM, 1937

Nó. 35286

STATE OF MISSOURI at the Relation of LLOYD L. GAINES,  
Appellant,

vs.

S. W. CANADA, Registrar of the University of Missouri, and  
the Curators of the University of Missouri, a Body Corporate, Respondents

NOTICE OF FILING MOTION FOR REHEARING

To Fred L. Williams, Nick T. Cave, William S. Hogsett,  
Attorneys for S. W. Canada, Registrar of the University  
of Missouri, and the Curators of the University of  
Missouri, a Body Corporate, Respondents: and to  
Respondents.

You are hereby notified that the above named appellant  
on the 18th day of December, 1937, filed in the above en-  
titled cause, in the Supreme Court of Missouri, his motion  
for re-hearing, copy of which motion is hereto attached.

(Signed) S. R. Redmond, Charles H. Houston, Henry  
D. Espy, Attorneys for Appellant.

Service of the foregoing notice and receipt of a copy  
thereof and attached motion is hereby acknowledged this  
17th day of December, 1937.

(Signed) Fred L. Williams, Nick T. Cave, William  
S. Hogsett, Ralph E. Murray, Attorneys for  
Respondents.

[fol. 229] IN THE SUPREME COURT OF MISSOURI, EN BANC,  
SEPTEMBER TERM, 1937

No. 35,286

STATE OF MISSOURI at the Relation of LLOYD L. GAINES,  
Appellant,

vs.

S. W. CANADA, Registrar of the University of Missouri, and  
the Curators of the University of Missouri, a Body Corporate, Respondents

APPELLANT'S MOTION FOR A REHEARING AND SUGGESTIONS IN  
SUPPORT THEREOF

Now comes the appellant within ten (10) days after the filing of the opinion in the above entitled cause on December 9, 1937, and moves the Court to set aside the decision rendered therein and to grant appellant a rehearing thereof on the grounds that questions decisive of the case and fully submitted by counsel in brief and argument have been overlooked by the Court, that the decision violates the first section of the Fourteenth Amendment to the United States Constitution in that the State of Missouri by and thru the action of the Court has deprived him of his property without due process of law and has denied him the equal protection of the laws; the decision violates Section 30 of Article II of the Constitution of the State of Missouri, and is in conflict with controlling decisions of the United States Supreme Court, as hereinafter set forth and cited.

I-

The Court overlooked, failed to consider, and omitted from its opinion the following-mentioned material facts, shown in the Abstract at the pages indicated:

(1) That the Curators of the University of Missouri [fol. 230] admit foreign students to the University and its School of Law: white students from other states (Abs. 107), and foreign students—Hindu, Chinese, Japanese; that no geographical distinction is made as to where the student comes from; that in admitting students of every race except those of African descent, no question is raised about

whether they are going to locate in Missouri after they have received the benefit of instruction in the University of Missouri, or immediately return to their foreign homes (Abs. 120).

(2) That the tuition or fees charged by the University of Missouri for registration and study in the School of Law do not cover the expense of operating the School of Law, but must be supplemented by state appropriations (Abs. 124-125).

(3) That the Board of Curators of the University of Missouri, as trustee for the citizens and taxpayers of Missouri, hold valuable property allocated to use of the School of Law of the University of Missouri: such as law library of 35,000 volumes (Abs. 96).

(4) That the School of Law of the University of Missouri is a public institution which exists to serve the state and its bar (Abs. 96); that thru membership on the editorial board of the Missouri Law Review law students in the School of Law have unusual opportunities to gain experience in legal research in Missouri law (Abs. 75-76, 98, 103-105, 141-144), to which relator aspired (Abs. 75-76) and to which as a student of the School of Law of the University of Missouri he would have had a chance dependent on his scholarship record (Abs. 117).

(5) That white Missourians have their option of attending the state University of Missouri, or crossing the State line to a university closer to their homes than the University of Missouri (Abs. 90).

(6) That Lincoln University is only an undergraduate college (Abs. 138-139) and at no time material to this case has had any funds with which to expand beyond said undergraduate instruction, or to introduce any instruction in law. (Abs. 77, 131, 139, 149).

[fol. 231] (7) That the only appropriation to Lincoln University for expansion beyond an undergraduate college was an attempted appropriation of \$500,000 in 1921, which was declared void by this Court (Abs. 149-150).

(8) That the Board of Curators of Lincoln University never administered the scholarship funds appropriated by the state for payment of tuition and on account of tuition

of Negro students to foreign universities (Abs. 135, 167-168).

(9) That the letter to relator from President Florence of Lincoln University, September 23, 1935, definitely indicated to relator that there was no need of his applying for a legal education at Lincoln University by referring him exclusively to the State Superintendent of Schools (Abs. 72-73).

## II

The decision herein deprived appellant of the equal protection of the laws as guaranteed him by the Fourteenth Amendment to the United States Constitution in holding that the scholarship provisions in section 9622, R. S. 1929, afford appellant the equal protection of the laws compared with the State of Missouri affording to white citizens of Missouri and all foreigners except persons of African descent a legal education in the University of Missouri.

## III

The decision herein is in conflict with the ruling of the United States Supreme Court in *McCabe vs. Atchison, Topeka & Santa Fe Ry. Co.*, 235 U. S. 151, 160, in making the appellant's individual right to a legal education by and within the State of Missouri depend on the actions of others over whom he has no control.

### Suggestions in Support of Motion for Rehearing

1. Under Head I, *Supra*, the Court completely overlooked the facts that (a) the University of Missouri at state expense and with public officers, offers to Missouri white [fol. 232] citizens, and all foreigners except persons of African descent, an education in law, which appellant a Negro citizen taxpayer helps to provide for said whites and foreigners, while it excludes him in spite of his qualifications solely on account of his race, and forces him into involuntary exile beyond the state border; (b) that the tuition or fees paid by the Missouri white students and foreigners enrolled in the School of Law do not cover even the operating expenses of the School of Law but must be supplemented by public tax money, which appellant is compelled to pay in part without an opportunity to participate in the benefits therefrom.



Pearson vs. Murray, 169 Md. 478, 182 A. 590, 103 ALR. 706 (1936). Such facts are indispensable to a determination of the question whether the State of Missouri has denied appellant equal protection of the laws and deprived him of his property without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Section 30, Article II, of the Constitution of Missouri.

2. The Court adopted the wrong basis for comparing the scholarship provisions afforded Negroes under Section 9622, R. S. 1929, with the educational provisions offered white Missourians and foreigners in the School of Law of the University of Missouri. The Court in its opinion made the comparison on the basis of what the white and Negro students would have to pay. The Fourteenth Amendment to the United States Constitution and the Section 30, Article II, of the Constitution of Missouri do not measure appellant's rights on the basis of what white and Negro students have to pay when white students register in the state university and the Negro student is exiled beyond the state border. If any comparison is to be made, it must be on the basis of what the state does: how does the state treat the white and Negro students respectively. Thus if a Negro student barred from the University of Missouri is to receive equal treatment from the state even on a pecuniary basis, the state must give him the per capita contribution which the state makes to the legal education of a white student, figuring not only current [fol. 233] expenditure but capital investment as well—as for example the value of the library of the School of Law and other capital items. This point was clearly stressed in appellant's brief, pp. 48-49, and pressed on the Court in argument.

3. The Court in its opinion stresses the fact that appellant did not apply to Lincoln University for a legal education, whereas the record is clear that such an application would have been without effect. Lincoln University offered no legal instruction (Abs. 77) and President Florence's letter expressly directed appellant away from Lincoln University to the State Superintendent of Schools (Abs. 72-73). The law does not require a vain and useless thing. Further, if the Board of Curators of Lincoln University had desired

to offer legal instruction to petitioner-appellant, or any other student, they were without funds.

4. Under Head II, *supra*, the argument above under paragraph 2 is in point.

5. Petitioner's constitutional rights are individual, just as his obligations to the government, state and nation, are individual; and cannot be made to depend on how many or how few Negroes apply to the state for a legal education.

*McCabe vs. Atchison, Topeka & Santa Fe Ry. Co.*,  
235 U. S. 151, 160.

In conclusion, appellant earnestly and respectfully asks the Court to consider each of the grounds herein presented, and set aside its decision rendered December 9th and grant him a rehearing in this cause.

Respectfully submitted, S. R. Redmond, Charles H.  
Houston, Henry D. Espy, Attorneys for Appellant.

[fol. 234] And thereafter, and on the 20th day of December, 1937, the following further proceedings were had and entered of record in said cause, to-wit:

No. 35286

STATE ex Rel. LLOYD L. GAINES, App.

VS.

S. W. CANADA, etc., et al., Resp.

Comes now the appellant, by attorney, and files herein a motion to modify opinion.

Which said motion to modify opinion is in words and figures following, to-wit:

[fol. 235] IN THE SUPREME COURT OF MISSOURI, EN BANC,  
SEPTEMBER TERM, 1937

No. 35,286

STATE OF MISSOURI at the Relation of LLOYD L. GAINES,  
Appellant,

vs.

S. W. CANADA, Registrar of the University of Missouri, and  
the Curators of the University of Missouri, a Body Corporate, Respondents

NOTICE OF FILING MOTION TO MODIFY OPINION

To Fred L. Williams, Nick T. Cave, William S. Hogsett, and  
Ralph E. Murray, Attorneys for S. W. Canada, Registrar  
of the University of Missouri, and the Curators of the  
University of Missouri, a Body Corporate, Respondents,  
and to Respondents:

You are hereby notified that the above named appellant  
will on the 20th day of December, 1937, file in the above  
entitled cause, in the Supreme Court of Missouri, his motion  
to modify the opinion, a copy of which Motion is hereto  
attached.

S. R. Redmond, Charles H. Houston, Henry D. Espy,  
Attorneys for Appellant.

Service of the foregoing notice and receipt of a copy  
thereof and attached motion is hereby acknowledged this —  
day of December, 1937.

\_\_\_\_\_, \_\_\_\_\_, Attorneys for Respondents.

[fol. 236] IN THE SUPREME COURT OF MISSOURI, EN BANC,  
SEPTEMBER TERM, 1937

No. 35,286

STATE OF MISSOURI at the Relation of LLOYD L. GAINES,  
Appellant,

vs.

S. W. CANADA; Registrar of the University of Missouri, and  
the Curators of the University of Missouri, a Body Corporate, Respondents

MOTION TO MODIFY OPINION

Now comes the appellant within ten (10) days after the filing of the opinion in the above entitled cause on December 9, 1937, and moves the Court to modify its opinion rendered herein on said December 9, 1937, and for grounds of said motion states the following:

I

The Court in its opinion in discussing the question "whether or not the advantages for higher education offered to the Negroes of the state are substantially equal to the advantages furnished white students" in order to determine the further question whether appellant has been deprived by the state of Missouri "of his proprietary rights or any other right guaranteed to him by the State or Federal Constitution", wholly failed to mention or consider the following facts of record which appellant submits are decisive of the questions posed:

(1) That the Curators of the University of Missouri admit foreign students to the University and its School of Law; white students from other states and countries, [fol. 236] Hindus, Chinese, Japanese, and students of every race except those of African descent, who are barred regardless whether they are citizens of the state of Missouri or not; that in admitting foreign students no geographical distinctions are inquired into and no question raised as to how far such student has to come to reach the University of Missouri; that no question is raised with the foreign student before admitting him as to whether he intends to locate in Missouri after being educated in the University of Mis-



souri or whether they intend immediately to return to their foreign homes (Abs. 107, 120).

(2) That the tuition or fees charged by the University of Missouri for registration and study in the School of Law do not cover the expense of operating the School of Law, but must be supplemented by state appropriations (Abs. 124-125).

(3) That the Board of Curators of the University of Missouri, as a public trustee for the citizens and taxpayers of Missouri, hold valuable property allocated to the use of the School of Law of the University of Missouri, and the legal education of the students of said School: for example, a law library of 35,000 volumes (Abs. 96).

(4) That the School of Law of the University of Missouri is a public institution which by official declaration exists to serve the state and its bar (Abs. 96); that for a lawyer practising in Missouri training at the School of Law of the University of Missouri offers certain advantages over training in other law schools (Abs. 127-128) in that, among other things, a higher percentage of University of Missouri law graduates pass the state bar examinations than the percentage of graduates from other schools (Abs. 145-146); that thru membership on the editorial board of the Missouri Law Review law students in the School of Law have unusual opportunities to gain experience in legal research in Missouri law (Abs. 75-76, 98, 103-105, 141-144), to which reporter aspires (Abs. 75-76) and to which as a student of the School of Law of the University of Missouri he would have [fol. 238] a chance dependent on his scholarship record (Abs. 117).

(5) That appellant desires to practise law in the State of Missouri (Abs. 76).

(6) That the School of Law of the University of Missouri is the only publicly supported law school in the State of Missouri (Abs. 120).

(7) That Lincoln University is only an undergraduate college (Abs. 129, 138-139) and has never had funds with which to offer instruction in law (Abs. 77, 131, 139, 149-150), and does not offer any instruction in law (Abs. 77), and has no definite plans for introducing instruction in law (Abs. 130, 136).

(8) That the Board of Curators of Lincoln University never administered the scholarship funds appropriated by the State for the payment of tuition and on account of tuition differentials for Negro students to study in foreign universities subjects offered to white students in the University of Missouri (Abs. 135, 167-168).

(9) That the letter to appellant from President Florence of Lincoln University, September 23, 1935, definitely indicated to appellant that there was no need of his applying for legal education at Lincoln University by referring him exclusively to the State Superintendent of Schools (Abs. 72-73).

The matters above were all stressed in brief and/or argument before the Court, and must be considered in an effort to determine whether the State of Missouri has denied appellant the equal protection of the laws and deprived him of his property without due process of law as guaranteed for his protection in the Fourteenth Amendment to the Constitution of the United States and Section 30 of Article II of the Constitution of the State of Missouri. Unless the Court considers the above facts, appellant will be disadvantaged and under an unfair burden in seeking review of his case by the Supreme Court of the United States.

## II

The Court failed to consider and give the appellant the benefit of the law imposing the burden of proof to establish [fol. 239] that the State has afforded appellant a substantial equivalent to a legal education in the University of Missouri School of Law, from which the Board of Curators has barred him solely on account of color, clearly on respondents.

Pearson vs. Murray, 169 Md. 478, 182 A. 590, 103 ALR 706 (1936).

See further Head I-D, pp. 52-53, Appellant's Brief and cases there cited.

The decision of the Court as now stated forces appellant not only to prove discrimination by exclusion from the University of Missouri in spite of his legitimate qualifications for admission to the School of Law thereof, but further makes him go forward and prove the issue that the State has not afforded him a substantial equivalent.

## III

The opinion of the Court in discussing the question how far appellant would have to travel from his home in St. Louis to the universities of other states as compared with the distances which some Missouri white students would have to travel to reach Columbia, Missouri, where the University of Missouri is located, wholly overlooked the fact that the white students are not compelled to travel to the University of Missouri, but have their option to cross the state line and attend a state university nearer to their residence.

## IV

The opinion of the Court did not consider the fact that the legal and constitutional rights of appellant to a legal education at the hands of the State of Missouri do not depend on the action or inaction of other Negroes, but are individual to him alone.

McCabe vs. Atchison, etc. Ry. Co., 235 U. S. 151, 160.

Wherefore the premises considered appellant prays that the opinion of the Court be modified by considering and discussing the points set forth above, and for such other relief in reference to the opinion as to the Court may seem meet and proper.

S. R. Redmond, H. D. Espy and C. H. Houston, Attorneys for Appellant.

[fol. 240] And thereafter, and on the 27th day of December 1937, the following further proceedings were had and entered of record in said cause, to-wit:

No. 35286

STATE ex Rel. LLOYD L. GAINES, App.,

VS.

S. W. CANADA, etc. et al., Resps.

Come now the respondents, by attorneys, and file suggestions in opposition to appellant's motion for a rehearing and motion to modify opinion.

Which said Suggestion in Opposition are in words and figures following, to-wit:

[fol. 241] IN THE SUPREME COURT OF MISSOURI, EN BANC,  
SEPTEMBER TERM, 1937

No. 35286

STATE ex Rel. LLOYD L. GAINES, Appellant,

vs.

S. W. CANADA, Registrar of the University of Missouri, and  
the Curators of the University of Missouri, a Body Corporate, Respondents

SUGGESTIONS IN OPPOSITION TO APPELLANT'S MOTION FOR  
REHEARING AND MOTION TO MODIFY

Appellant's motions for rehearing and to modify are largely based upon the same grounds.

The motion for rehearing first complains that the court has omitted from its opinion certain alleged facts. The obvious answer is that none of the alleged facts is material to the questions presented for decision. The court's opinion has fully and fairly stated all of the facts necessary to a decision of appellant's assignments of error. This is all that is required.

Appellant next contends that the decision deprives him of the equal protection of the laws. That of course is the principal question decided. The opinion has disposed of that question upon grounds which are impregnable to attack; and there is nothing that we care to add.

Appellant contends that the decision is in conflict with *McCabe v. Atchison, Topeka & Santa Fe Railway Co.*, 235 U. S. 151, holding that the constitutional right to equal protection of the laws is a personal one, not dependent upon the number of persons affected. That appellant's contention [fol. 242] is unsound is perfectly apparent from the opinion herein, which clearly holds that appellant as an individual citizen is constitutionally entitled to an opportunity for legal education substantially equal to that offered to white students.

This covers the three contentions advanced in the motion for rehearing. Plainly they are without merit, and that motion should be denied.

Appellant's motion to modify the opinion is substantially a restatement of the same contentions presented in the



motion for rehearing, except his contention as to the burden of proof. As a matter of fact the opinion does not place on appellant the burden of proof—indeed, the opinion does not discuss the burden of proof at all. However, the opinion does fully state the essential facts, which facts (proven by evidence offered by appellant himself) show that appellant was accorded an opportunity for legal education substantially equivalent to that offered to white students in the University of Missouri School of Law. This renders immaterial any discussion as to the burden of proof.

We respectfully submit that appellant's motion for rehearing and motion to modify should each be denied.

Fred L. Williams, Nick T. Cave, Ralph E. Murray,  
William S. Hogsett, Attorneys for Respondents.

No. 35286.

STATE ex Rel. LLOYD L. GAINES, App.,

vs.

S. W. CANADA, etc., et al., Resps.

Now at this day, the Court having seen and fully considered appellant's motion for a rehearing and motion to modify opinion, doth order that both of said motions be, and they are hereby overruled.

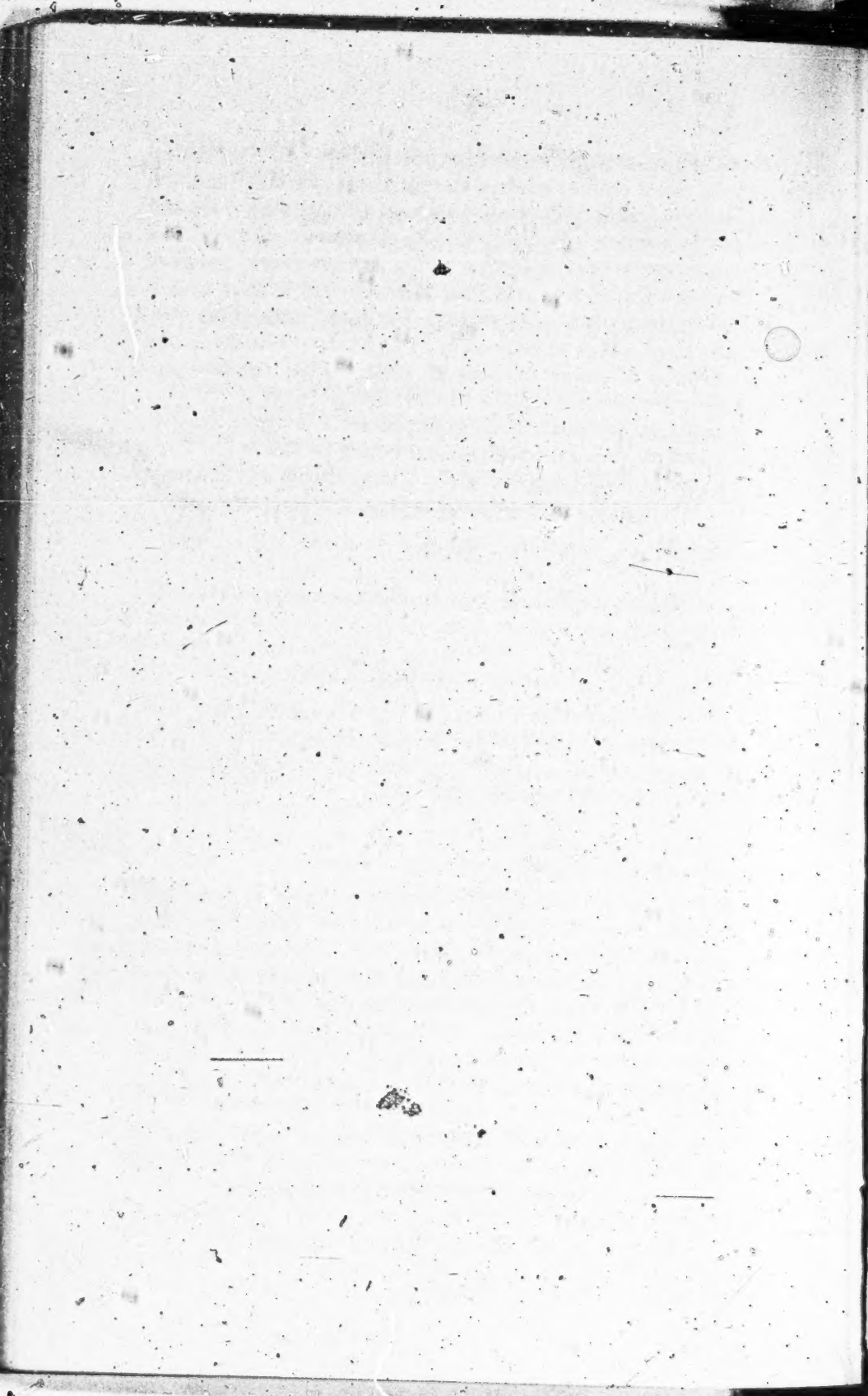
[fol. 243] STATE OF MISSOURI, set:

I, E. F. Elliott, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the record and proceedings in a cause entitled State of Missouri, at the relation of Lloyd L. Gaines, appellant, against S. W. Canada, Registrar of the University of Missouri, and the Curators of the University of Missouri, a body corporate, respondents, No. 35286, as fully as the same appears of record and on file in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Supreme Court, at my office in the City of Jefferson, State aforesaid, this 12th day of May 1938.

E. F. Elliott, Clerk, Supreme Court of Missouri.  
(Seal of the Supreme Court of Missouri.)

(5709)



[fol. 239] And thereafter and on the 25th day of February 1938, the following further proceedings were had and entered of record in said cause, to-wit:

35286

STATE ex Rel. LLOYD L. GAINES, App.,

vs.

S. W. CANADA, etc., et al., Resps.

Now at this day, the court having seen and fully considered appellant's motion for a rehearing and motion to modify opinion, doth order that both of said motions be, and they are hereby overruled.

STATE OF MISSOURI, set:

I, E. F. Elliott, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the above is a true and correct copy of the order of this court overruling appellant's motion for a rehearing and motion to modify opinion, as fully as the same remains on record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court. Done at my office in the City of Jefferson this 14th day of May 1938.

E. F. Elliott, Clerk, Supreme Court. (Seal of the Supreme Court of Missouri.)

[fol. 240] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1938

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.